CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 151

A. RAY OLIVER, EXECUTOR OF THE ESTATE OF LOLA CASTLIO OLIVER, DECEASED, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 7, 1946.

CERTIORARI GRANTED OCTOBER 14, 1946.

United States Circuit Court of Appeals,

EIGHTH CIRCUIT.

No. 13,174.
CIVIL.

A. RAY OLIVER, AS EXECUTOR OF THE ESTATE OF LOLA CASTLIO OLIVER, DECEASED, AND A. RAY OLIVER, HER HUSBAND, AND MRS. B. I. CASTLIO, (ALSO KNOWN AS B. IRENE CASTLIO), APPELLANTS,

VS.

UNITED STATES OF AMERICA, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 13, 1945.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit at the March Term, 1946, of said Court, before the Honorable John B. Sanborn, the Honorable Seth Thomas and the Honorable Walter G. Riddick, Circuit Judges.

Attest:

E. E. KOCH,
Clerk of the United States
Circuit Court of Appeals
for the Eighth Circuit.

(Seal)

Be it Remembered that heretofore, to-wit: on the 13th day of October, A. D. 1945, a transcript of record pursuant to an appeal taken from the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Lola Castlio Oliver and A. Ray Oliver, her husband, and Mrs. B. I. Castlio, (also Known as B. Irene Castlio), were Appellants and the United States of America was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

[fol. 1] Notice of Appeal.

(Filed August 14, 1945.)

In the United States District Court
Eastern District of Missouri
Eastern Division.

United States of America,
Plaintiff,
v.
Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, et al.,
Defendants.
} Docket No. 960 At Law.

Notice is hereby given that Lola Castlio Oliver, A. Ray Oliver, her husband, and B. Irene Castlio, defendants in the above entitled cause, hereby appeal to the Circuit Court of Appeals for the Eighth Circuit from the final judgment entered in this action on the 14th day of May, 1945.

Dated this 14th day of August, 1945.

IGOE, CARROLL, KEEFE & COBURN,
ROBERT V. NIEDNER,
ROBERTS P. ELAM,
Attorneys for Lola Castlio Oliver, A. Ray Oliver, Her Husband, and B. Irene Castlio.

[fol. 2] Docket entry showing filing of notice of appeal, and mailing copy of such notice to United States Attorney.

(August 14, 1945.)

Notice of appeal of Lola Castlio Oliver, et al defendants to the United States Circuit Court of Appeals, 8th Circuit from judgment entered herein on May 14, 1945, filed. Copy of such notice this day mailed to United States Attorney as directed by appellant.

[fol. 3] (Motion of United States of America for Leave to file Petition and for Order for Summons.)

(Filed June 6, 1941.)

In the United States District Court

Eastern District of Missouri,

Eastern Division.

United States of America, Plaintiff, vs. Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, et al., Defendants.	Docket No. 960 At Law. Tract No. 254.

Comes Now the United States of America by Harry C. Blanton, United States Attorney for the Eastern District of Missouri, and moves the Court for permission to file the above-entitled proceeding to condemn certain real estate as in said petition described and asks that this

Court enter an order permitting the filing of said petition and directing summons to issue to the defendants named therein.

Respectfully submitted,

HARRY C. BLANTON,
United States Attorney.

(Order)

Motion for leave to file the petition for condemnation in the above-entitled proceeding is granted and the petition ordered filed;

And It Is Hereby Further Ordered and Directed that the Clerk of this Court shall issue summons and notice to the defendants and each of them as named in the petition for condemnation filed in the above-entitled cause to appear before the Judge of this Court at the United States Court House in the City of St. Louis, State of Missouri, on the 14th day of July, 1941 at 10:00 in the forenoon, then and there to answer the petition of the United States of America and at which time and place said petition will be heard;

And It Is Hereby Further Ordered and Directed that inasmuch as this is a proceeding for the condemnation of property under the power of eminent domain, the procedure for the service of said summons and notice is not governed by Rule No. 4 of the New Rules of Civil Procedure for the District Courts of the United States; that said rule is not applicable to the service of such summons and notice; and that in the service of summons and notice herein, plaintiff is authorized to follow its former practice.

GEO. H. MOORE,
United States District Judge.

Dated this 6th day of June, 1941.

Endorsed; Filed: Jan 6 1941 Jas. J. O'Connor, Clerk.

[fol. 4] (Petition in Condemnation.)

(Filed June 6, 1941.)

In the United States District Court
Eastern District of Missouri
Eastern Division

Petition in Condemnation

United States of America, Plaintiff,

vs.

Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and

Docket No. 960
At Law.
Tract No. 254

Lola Castlio Oliver

Mrs. B. I. Castlio

A. Ray Oliver

Collector of Revenue of St. Charles County, Missouri

County of St. Charles, State of Missouri

All Other Unknown Owners of all that tract of land in St. Charles County, Missouri, Known as Tract No. 254, and more particularly described herein;

Defendants.

[fol. 4-A] To the Honorable, the Judges of the United States District Court for the Eastern District of Missouri:

Now Comes the plaintiff herein, the United States of America, a sovereign, by its attorneys, Harry C. Blanton, United States Attorney for the Eastern Judicial District of Missouri, and A. G. Edwards, Special Assistant to the United States Attorney, and, leave of Court having been first obtained, files this, its petition herein, at the direction and under the authority of the Attorney General of the United States pursuant to the request of the Secretary of

War of the United States, and represents unto the Court as follows:

First: That the defendants herein named are the owners of or claim or may claim an interest or interests in and to the real estate in this petition described, which the plaintiff seeks to condemn in and by this proceeding for the public uses hereinafter more particularly set out;

Second: That the said real estate hereinafter described is located in St. Charles County, Missouri, and within the jurisdiction of the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri;

Third: That the plaintiff, the United States of America, is authorized and empowered to acquire the lands herein described by purchase, condemnation, or otherwise, and that the United States Attorney is acting under instructions from the Attorney General of the United States and at the request of the Secretary of War of the United States;

Fourth: That this is an action having for its purpose, among other things, the acquiring by condemnation and in fee simple absolute of the land hereinafter described and the title thereto, which real estate is located as afore-[fol. 5] said, and is authorized and directed to be brought by the Secretary of War pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 USC Section 257); and the Act of Congress approved July 2, 1917, USC 50:171, as amended, which authorizes the acquisition by the Secretary of War of land suitable and necessary for military purposes, and the Act of Congress approved June 26, 1940, (Public No. 667—76th Congress); and the Act of Congress approved September 24, 1940, (Publ. Ros. 99—76th Congress); which Acts appropriated funds for such purposes;

Fifth: That the project herein referred to and the matters to be performed, being an acquisition of land for military purposes for an ordnance plant and the national defense of the United States, are within the purview of the sovereign plaintiff and of the Congress of the United

States and the said lands and territory to be acquired are located within the jurisdiction of this Court;

Sixth: That it is the opinion of the Secretary of War that it is necessary and advantageous to the interests of this sovereign plaintiff that the said land be acquired by condemnation under judicial process, and that the acquisition in fee simple of said lands be had forthwith; that the money has been appropriated and is available to pay for said lands;

Seventh: That the land to be condemned and the nature and extent of the interests therein of the various persons and claimants thereto as to each respective parcel is described as follows:

(Description of property omitted pursuant to stipulation as to record on appeal)

[fol. 6] (B)

That the following defendants own or may own or may claim to have some right, title, interest, lien or estate in, to or upon said land:

Lóla Castlio Oliver
Mrs. B. I. Castlio
A. Ray Oliver

[fol. 7] Eighth: That all of the land described in this petition is subject to liens or claims for certain taxes, and the County of St. Charles, State of Missouri, and the Collector of Revenue of St. Charles County, Missouri, are, therefore, named parties defendant herein;

Ninth: That within the boundaries of the above described tract of land are located certain roads and highways; that the defendants hereinbefore named as owners of the fee and as claiming an interest in said lands, each claim and assert, or may claim and assert a reversionary interest in and to the premises respectively so occupied as roads and highways, and which reversionary interests the plaintiff herein seeks to include and condemn in this proceeding;

Tenth: That all and singular, the heirs, husbands, wives, devisees, executors, administrators, representatives, alienees, successors and assigns of each and every of the above named persons, firms and corporations; and all unknown owners, lienors and claimants, having or claiming any right, title, estate, equity, interest or lien; and all occupants, lessees, licensees, users, holders and owners of and claimants to easements in, on, over, across or through said lands; and all persons, firms and corporations having or claiming any title to or interest in any of said land or any part thereof, herein sought to be condemned, are made parties defendant, as hereinabove specifically named, if known, and if unknown, such unknown persons by the description of the "Unknown Owners" of the land herein described and to be condemned, to the end that they may come into court and by proper pleadings make known their interests and claims to said lands or to the proceeds arising therefrom;

Eleventh: That your petitioner has attempted to set forth the interest or estates of all persons, firms and corporations in the lands herein mentioned as far as your petitioner has been able to ascertain the same; but, notwithstanding such statement, all persons, firms or corporations, including all unknown officers, trustees, directors and shareholders of any defunct corporation having or claiming any interest or estate in or to said land, are made parties to this proceeding generally, to the end that all of their rights, title, interests and estate, whatever it [fol. 8] may be, to all and singular, the premises above mentioned may be reached and divested out of them and vested in your petitioner, the United States of America;

Wherefore, your petitioner prays that this Honorable Court will take jurisdiction of this cause and will make and have entered all such orders, judgments and decrees as may be necessary to bring all the known owners of said land before this Court, and to make all unknown parties having any interest therein defendants hereto, and to that end that process, summons and notice may issue for the defendants hereinbefore named, and for the order of the Court directing notice of suit, and for publication thereof to the unknown, not found and non-resident de-

fendants herein, if any there be, all as required by law, giving them notice of the time when and the place where this petition will be heard, and for such other orders and decrees as may be proper and necessary; and that the Court will appoint three disinterested commissioners, qualified by law, to determine, assess, and award the value of the property proposed to be taken and other damages which may be sustained by the respective owners of or persons claiming an interest in and to the aforesaid property hereinbefore described and proposed to be taken; and that said commissioners will assess according to the provisions of the acts [appropos] to this proceeding and the provisions of the law applicable thereto, under which this action is brought, the special and direct benefits arising from the improvements, if any, which may be sustained by, or may accrue to, said defendants; that the Court will decree to this plaintiff the right of judgment in condemnation herein in fee simple as contemplated by the laws of Congress in this case made applicable, and that these defendants and each of them, and all other claimants, be required to show cause on the day therein fixed why said plaintiff should not have the relief herein prayed for; that plaintiff may have judgment for condemnation of the property hereinbefore described, and that the defendants, and each of them shall be divested of all of their said right, title and interest in and to the aforesaid premises, and that the title thereto in fee simple shall be vested in this sovereign plaintiff, and that it shall have, own and control the same forever; that the Court, upon the filing of this petition, will make an order pursuant to the Act of Con-
[fol. 9] gress approved February 26, 1931, (46 Stat. 1421), decreeing to the plaintiff the right to take immediate possession of said lands for the purposes hereinbefore described in order that the plaintiff, its servants, agents and employees, may proceed with the aforesaid project and for the purposes hereinbefore required and to permit the said plaintiff to proceed with the work of construction of said ordnance plant as contemplated by the plans of said project; that the plaintiff may have judgment against the respective premises, property or interests therein for special benefits, if any, in excess of the values and damages in each instance assessed in the premises by the

aforesaid commissioners; and that this Court will make such further necessary orders in the premises as shall be just, proper, necessary and requisite to vest said lands in fee simple absolute in the United States of America, and grant to this petitioner all such other and further relief in the premises to which this petitioner may be found entitled and as the Court may deem just and proper.

THE UNITED STATES OF AMERICA,
By HARRY C. BLANTON,
United States Attorney for the Eastern District of Missouri,
402 New Federal Building,
St. Louis, Missouri,

A. G. EDWARDS,
Special Assistant to the United States Attorney,
410 New Federal Building,
St. Louis, Missouri.

[fol. 10] United States of America }
Eastern District of Missouri } ss.

Before me, the undersigned, personally appeared Harry C. Blanton, United States Attorney in and for the Eastern District of Missouri, and made oath in due form of law that the matters and facts set forth in the foregoing petition are true to the best of his knowledge, information and belief; and that this proceeding is in good faith for the purposes specified in the petition.

HARRY C. BLANTON.

Subscribed and sworn to before me, this 6th day of June 1941.

JAMES J. O'CONNOR,
Clerk of U. S. District Court in and for the Eastern District of Missouri,
By RUBY BARHAM,
(Seal) Deputy.

Endorsed; Filed: Jun 6 1941. Jas. J. O'Connor, Clerk.

[fol. 11] (Declaration of Taking.)

(Filed June 6, 1941.)

In the
United States District Court
In and For the Eastern District of Missouri.

United States of America,
Petitioner,
vs.
675.96 Acres of Land, More or Less, Situate in St. Charles County, State of Missouri, and Lola C. Oliver et al,
Defendants.
Case No. 960.

To the Honorable,
The United States District Court:

I, Henry L. Stimson Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), and April 11, 1918 (40 Stat. 518, 50 U. S. C. sec. 171), which Act authorizes the acquisition of land for military purposes, and the Act of Congress approved June 26, 1940 (Public No. 667—76th Congress), which Act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for the site of an ordnance munitions plant and for other uses incident thereto. The said lands have been selected by me for acquisition by the United States for use in connection with the establishment of the Weldon Springs Ordnance Plant, St. Charles County, Missouri, and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

[fol. 12] 2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of the same lands described in the petition in the above entitled cause.

3. The estate taken for said public uses is the full fee simple title thereto.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this declaration to be signed in its name by said Henry L. Stimson, Secretary of War, this the 29th day of May, A. D. 194 , in the City of Washington, District of Columbia.

HENRY L. STIMSON,
Secretary of War of the United States.

[fol. 13] Schedule "A".

The land which is the subject matter of this Declaration of Taking and of this condemnation aggregates 675.96 acres, more or less, situate and being in the County of St. Charles, State of Missouri. A Description of the lands taken, together with a list of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

Tract 254

Parcel No. 1

Description:

A tract of land being a part of fractional Sections 22, 23 and 27 and part of U. S. Surveys No. 56 and 296, Township 46 North, Range 2 East, described as follows: Beginning at a point where the section line between fractional sections 22 and 23 of said Township 46 North, Range 2 East, intersects the south line of U. S. Survey No. 296; thence along the south line of said survey south 80° West, 10.60 chains; thence North 10° 30′ West 24.25 chains; thence North 79° 30′ East 18.49 chains; thence North 29° 30′ West 18.00 chains, more or less, to the center of Krout Run Creek; thence the following courses along said creek: North 22° 15′ East 2.42 chains; thence North 74° 45′ East 4.96 chains; thence North 35° East 1.25 chains; thence North 33° 15′ West 1 chain to a point on the north line of Lot No. 7, as the same is designated on the plat of subdivision, of the real estate of John W. Nelson, deceased; thence North 81° 30′ East 18.77 chains; thence North 6° East 20.63 chains; thence South 74° West 20.79 chains; thence North 10° West 13.37 chains to the center of Dardenne Creek; thence up said Dardenne Creek the following courses and distances along the southern line of the Hoecklemann tract as follows: South 75° West 4.00 chains; thence North 70° West 2.00 chains; thence North 57° West 5.00 chains; thence North 84° West 9.50 chains; thence South 64° 30′ West 3.00 chains; thence South 27° 30′ West 4.70 chains; thence South 21° West 3.00 chains; thence South 36° West 5.27 chains; thence North 60° 30′ West 4.33 chains; thence North 70° West 7.00 chains; thence South 50° West 10.00 chains; thence South 65° West 5.85 chains; thence South 54° 45′ West 7.50 chains; thence East 6.40 chains, more or less, to a point on the West line of U. S. Survey No. 296; thence along said Survey line South 9° East 14.30 chains; thence North 81° East 22.98 chains; thence South 29° East 14.04 chains to the center of Krout Run Creek; thence along said creek the following courses; South 20° 15′ West 10.45 chains; South 25°

30′ West 10.00 chains; South 42° 15′ West 1.00 chain;
[fol. 14] thence South 20° West 5.50 chains; South 37° East 9.26 chains; thence South 15° 15′ East 12.23 chains to a stone in the center of a County Road; thence South 7° 30′ East 10.09 chains; thence East 20.24 chains to a point on line between fractional Sections 26 and 27, Township 46 North, Range 2 East; thence North 1° 30′ East, along said Section line 18.11 chains to the place of beginning, said land being situated in St. Charles County, Missouri, and containing 300.73 acres, more or less.

Parcel No. 2

The eastern part of Lot 1 and all of Lot 4 of the division of land belonging to the estate of James F. Howell, deceased, more particularly described as follows:

Beginning at the Northeast corner of said Lot 4, being also the Northeast corner of U. S. Survey 887, thence South 7½° West 31.90 chains to the Southeast corner of said U. S. Survey 887; thence North 82½° West 34.84 chains to the Southwest corner of said lot 4; thence North 7½° East 12.24 chains to South line of lot 1; thence North 53° West 5.83 chains; thence North 6½° West 7.61 chains to corner, being the Southeast corner of land formerly owned by John Fritz; thence North 7½° East 16.80 chains to corner, being the Northwest corner of said lot 1; thence South 82½° East 10.50 chains to corner in Rutgers line; thence with said line South 27° East 9.39 chains to corner; thence South 82½° East 21.50 chains to place of beginning, said land being situated in St. Charles County, Missouri, and containing 125.25 acres, more or less, according to and being the same land as conveyed to Douglas Porter recorded in Book 15, Pages 320 and 321, St. Charles County, Missouri.

Parcel No. 3

A tract of land described as located partly within U. S. Survey 3106 and being more particularly described as follows:

Commencing at the corner in the line between U. S. Survey 476 and U. S. Survey 3106 at a distance of 2.75 chains South 22° West from the Northeast corner of said Survey 476, running thence from said point, North 86° 58′ East 6.92 chains; thence North 55° 03′ East 22.39 chains; thence South 67° 12′ East 35.26 chains to the point of beginning of the land herein described; thence South 62° West 5.02 chains; thence South 78° 30′ West 6.73 chains; thence West 5.54 chains; thence South 57° 30′ West 3.56 chains; thence South 17° 30′ West 7.82 chains; thence South 23° 30′ East 8.56 chains; thence North 75° East 3.78 [fol. 15] chains; thence North 64° East 6.81 chains; thence North 60° 45′ East 3.84 chains; thence North 59° 30′ East 10.30 chains; thence North 71° East 2.18 chains; thence North 88° East 3.70 chains; thence East 2.31 chains; thence North 75° East 5.50 chains; thence North 73° East 2.21 chains; thence North 29° 30′ East 7.58 chains; thence North 43° West 5.30 chains; thence North 68° 38′ West 2.51 chains; thence North 89° 49′ West 3.90 chains; thence South 72° 29′ West 2.88 chains; thence South 66° 12′ West 7.79 chains to the point of beginning, said land being situated in St. Charles County, Missouri, and containing 50.36 acres, more or less, said land being the same deeded to Mitchell Castlio, as recorded in Deed Book 56, page 278, St. Charles County, Missouri.

Names of purported owners: Lola Castlio Oliver, Mrs. B. I. Castlio, and A. Ray Oliver.

Estimated Compensation: $21,500.00.

(Description of Tract No. A, and attached plats, omitted pursuant to stipulation as to record on appeal.)

[fol. 16] Order and Judgment on Declaration of Taking.

(Filed June 6, 1941.)

In the United States District Court
Eastern District of Missouri
Eastern Division

United States of America, Plaintiff, vs. Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, et al., Defendants.	Docket No. 960 Tract No. 254

This cause coming on to be heard at this term of Court upon the motion of the plaintiff, the United States of America, to enter judgment on the Declaration of Taking filed in the above entitled cause on June 6, 1941, and upon consideration of said motion, the condemnation petition filed herein, said Declaration of Taking, the statutes in such cases made and provided, and the Court having heard arguments of counsel and being fully advised in the premises, finds:

First: That a petition in condemnation was duly filed at the request of the Secretary of War of the United States, the authority empowered by law to acquire the land described in said petition, and also under authority of the Attorney General of the United States:

Second: That said Petition and Declaration of Taking state the authority under which, and the public use for which, said land was taken; that said Declaration of Taking was signed by the Secretary of War of the United States, who was, and is, duly authorized and empowered by law to acquire the land described in said petition for, on behalf of and in the name of the United States of America, for the purposes therein set forth;

[fol. 17] Third: That a proper description of the land taken, sufficient for identification thereof, is set out in said Declaration of Taking:

Fourth: That said Declaration of Taking contains a statement of the estate or interest in the said land taken for said public use:

Fifth: That a map or plan showing the land taken is annexed to and made a part of said Declaration of Taking:

Sixth: That a statement is contained in said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for Tract No. 254 in the amount of Twenty-one Thousand Five Hundred Dollars and No Cents ($21,500.00), and that said sum was deposited in the Registry of this Court to the use of the persons entitled thereto, upon and at the time of the filing of said Declaration of Taking:

Seventh: That a statement is contained in said Declaration of Taking that the amount of the ultimate award of compensation, for the taking of said property, in the opinion of the Secretary of War of the United States, probably will be within any limits prescribed by Congress on the prices to be paid therefor.

It Is Therefore Ordered and Adjudged that the title to said land in fee simple absolute, vested in the United States of America upon the filing of said Declaration of Taking and depositing in the Registry of this Court of the aforesaid estimated total compensation, which land is situated in St. Charles County, Missouri and described as follows:

(Description of property omitted pursuant to stipulation as to record on appeal.)

[fol. 18] that said land is deemed to be condemned and taken for the use of the United States of America, and the right to just compensation for the property so taken is vested in the persons entitled thereto, and the amount of just compensation for said land involved in this condemnation proceeding, shall be ascertained and awarded in said proceeding and established by judgment herein pursuant to law, and

It Is Further Ordered and Adjudged that the possession of said lands shall be immediately surrendered to the United States of America.

This cause is held open for the entry of such other and further orders and judgments as may be just and equitable in the premises.

Entered on this 6th day of June, 1941.

GEO. H. MOORE,
United States District Judge.

Endorsed: Filed: Jun 6, 1941. Jas. J. O'Connor, Clerk.

[fol. 19] Answer of Defendants, Lola Castlio Oliver, Mrs. B. I. Castlio, and A. Ray Oliver.

(Filed December 23, 1941.)

In the United States District Court,
Eastern District of Missouri
Eastern Division.

United States of America, Plaintiff, -vs- Certain Land, Situate in St. Charles County, State of Missouri, Known as Tract Number 254, and Lola Castlio Oliver, Et-Al. Defendants.	Docket No. 960 At Law Tract No. 254.

1. Now Come Lola Castlio Oliver, Mrs. B. I. Castlio and A. Ray Oliver, defendants in the above entitled cause, and for their answer to plaintiff's petition in condemnation, deny that they were at the time of the institution of this action, or at any time since, the owners of the Fee-Simple Title or any other interest in and to the lands referred to in plaintiff's petition, or that they claim any title or interest therein, and deny that they were at said time, or

at any time since, in possession of said land or any part of it, and assert that they had long prior to the institution of this action, surrendered possession of said land to the plaintiff, pursuant to a valid contract, between plaintiff and the said defendants as will more fully appear hereinafter.

2. Defendants admit that the real estate described in plaintiff's petition is located in St. Charles County, Missouri, and within the jurisdiction of the United States District Court, in and for the Eastern Division of the Eastern Judicial District of Missouri.

3. Defendants admit that the plaintiff, the United States of America is empowered to acquire the lands described in plaintiff's petition, but defendants deny that plaintiff [fol. 20] is authorized to acquire said lands in any other way, than under the contract hereinabove referred to; defendants admit that the United States Attorney is acting under instructions from the Attorney General of the United States, but defendants deny, on information and belief that the said Attorney General is acting at the request of the Secretary of War of the United States, and state that the said Secretary of War has no power, right, or authority to acquire the lands described in the plaintiff's petition by condemnation, because of the contract and the possession taken by the plaintiff, as hereinafter described.

4. Defendants admit that this action has for its purpose among other things, the acquiring by condemnation and in fee simple absolute of the land described in plaintiff's petition and the title thereto, which real estate is located as aforesaid, but defendants deny that said action can be brought for any other purpose than that designated in said contract; defendants state that whether or not said action is authorized by the Acts of Congress, referred to in Paragraph "Fourth" of plaintiff's petition is immaterial, and defendants admit that funds have been appropriated for the purpose therein mentioned.

5. Defendants admit that the project referred to in the plaintiff's petition is within the [perview] of the sovereign plaintiff and of the Congress of the United States, and

that the said lands and territory thereby acquired [and] located within the jurisdiction of this Court.

6. Defendants state that they have not information sufficient to form a belief as to what the opinion of the Secretary of War might be as to the necessity and advantage to the plaintiff of acquiring said lands by condemnation, but that said opinion is immaterial in view of the contract, which has been executed by these defendants; defendants admit that the money has been appropriated and is available to pay for said lands.

7. Defendants admit that the lands attempted to be condemned in this action are described correctly in the [fol. 21] plaintiff's petition, but deny that they or any of the other defendants named in plaintiff's petition own or have any interest in said land.

8. Defendants state that whether or not there are located within the tract of land described in plaintiff's petition, certain roads and highways, is immaterial because the plaintiff would become the owner of any reversionary interest in and to the premises occupied as roads and highways, which might be claimed by the defendants upon the acquisition by the plaintiff of the lands described in the plaintiff's petition.

9. Defendants state, neither they nor any other persons named as defendants in the plaintiff's petition, nor any other persons whatever, other than the plaintiff, own or have any interest in the land described in the plaintiff's petition, and that these defendants are the only persons who have any interest in the contract executed by the defendant, as above mentioned, and who are entitled to any compensation from the plaintiff for the taking by the plaintiff and the continued possession by the plaintiff under said contract of said lands.

10. Defendants state neither they nor any other persons named as defendants in the plaintiff's petition, nor any other persons whatever, other than the plaintiff, own or have any interest in the land described in the plaintiff's petition, and that these defendants are the only persons who have any interest in the contract and deed executed

by the defendants as above mentioned, and who are entitled to any compensation from the plaintiff for the taking by the plaintiff and the continued possession by the plaintiff under said contract and deed of said lands.

11. Defendants state that the contract hereinabove referred to was solicited by one R. Newton McDowell, the duly authorized agent of the plaintiff; that the said McDowell, [——] the duly authorized agent for the plaintiff; that the said McDowell solicited these defendants to submit an offer for the sale of the said lands of said de- [fol. 22] fendants and supplied to said defendants, an instrument entitled "Option to Purchase Lands", that on the Twenty-fourth (24th) day of December, 1940, said defendants duly executed said instrument, in which contract they offered to sell to the plaintiff the real estate described in the plaintiff's petition for the sum of Seventy Thousand Dollars ($70,000.00), and returned the same to the said McDowell who in turn delivered it to the plaintiff; thereafter, on the Twenty-eighth (28th) day of December, 1940, the offer so made by said three defendants was duly accepted by and on behalf of the United States of America, by C. J. Harrold, Major Quartermaster Corps, United States Army, duly authorized to act for plaintiff in that connection.

12. That the contract created by said offer and accepted is as follows:—

Option to Purchase Land

Know All Men by These Presents: That the undersigned Lola Castlio Oliver and Mrs. B. I. Castlio, (her mother,) for and in consideration of One Dollar ($1.00), paid by the United States of America, hereinafter referred to as the Government, the receipt whereof is hereby acknowledged, hereby agrees for their [heiers], executors and assigns, to sell and convey to the Government for the consideration of Seventy Thousand Dollars ($70,000.00) that certain piece or parcel of land situated in the County of St. Charles, State of Missouri, more particularly described as follows:

A tract of land being a part of fractional Sections, 22, 23, and 27 and part of U. S. Surveys No. 56 and No. 296 Township 46 North, Range 2 East, described as follows: Beginning at a point where the section line between fractional sections 22 and 23 of said Township 46 North, Range 2 East, intersects the south line of U. S. Survey No. 296; thence along the south line of said survey South 80° W., 10.60 chains; thence N. 10° 30′ W., 24.25 chains; thence N. 79° 30′ E., 18.49 chains; thence N. 29° 30′ W., 18.00 chains, more or less, to the center of Krout Run Creek; thence the following courses along said creek; N. 22° 15′ E., 2.42 chains; N. 74° 45′ E., 4.96 chains; N. 35° E., 1.25 chains; N. 33° 15′ W., 1 chains to a point on the north line of Lot No. 7, as the same is designated on the plat of subdivision, of the real estate of John W. Nelson, deceased; thence N. 81° 30′ E., 18.77 chains; thence N. 6° E., 20.63 chains; thence S. 74° W., 20.79 chains; thence N. 10° W., 13.37 chains to the center of Dardenne Creek; thence up said Dardenne Creek the following courses and distance along the southern line of the Hoecklemann tract as follows: S. 75° W., 4.00 chains; N. 70° W., 2.00 chains; N. 57° W., 5.00
[fol. 23] chains; N. 84° W., 9.50 chains; S. 64° 30′ W., 3.00 chains; S. 27° 30′ W., 4.70 chains; S. 21° W., 3.00 chains; S. 36° W., 5.27 chains; N. 60° 30′ W., 4.33 chains; N. 70° W., 7.00 chains; S. 50° W., 10.00 chains; S. 65° W., 5.85 chains; S. 54° 45′ W., 7.50 chains; thence East 6.40 chains, more or less, to a point on the West line of U. S. Survey No. 296; thence along said survey line S. 9° E. 14.30 chains; thence N. 81° E., 22.98 chains; thence S. 29° E., 14.04 chains to the Center of Krout Run Creek; thence along said creek the following courses: S. 20° 15′ W. 10.45 chains; S. 25° 30′ W., 10.00 chains; S. 42° 15′ W., 1.00 chains; S. 20° W., 5.50 chains; S. 37° E., 9.26 chains; S. 15° 15′ E., 12.23 chains to a stone in the center of a County Road; thence S. 7° 30′ E., 10.09 chains; thence East 20.24 chains to a point on line between

fractional Sections 26 and 27, Township 46 N., Range 2 E., thence N. 1° 30' E., along said Section line 18.11 chains to the place of beginning. A small three sides strip of land in Survey No. 296, containing 24/100 of an acre previously conveyed to J. E. Marsh by these grantors by deed, is hereby [accepted] it being contained within the metes and bounds as given above. The above described tract containing exclusive of said exception 300.73 acres. Also a tract of land containing 80 acres, more or less, being part of survey No. 887 in Township 46 N., Range 3 East, and being the same land conveyed to the said Douglas Porter by deed from Hiram B. Castlio, dated March 14, 1876, to which deed reference is hereby made for a more complete description of said land. Also a tract of land containing 45.25 acres in said Survey No. 887 in Township 46 N., Range 3 East, and being the same land conveyed to the said Douglas Porter by his father Richard Porter to which deed reference is made.

Also a tract of land described in a deed from Louis D. Dozier and wife et al to Mitchell Castlio, dated October 20th, 1891, and recorded in the Recorder's Office of St. Charles County, Missouri, in Book 56, page 278, and following, as an Island in the Missouri River in the Eastern part of U. S. Survey No. 3106 of Township 45 N., Range 3 E., of the 5th Principal Meridian, containing 30 acres, more or less, and as being bounded North and West by what was formerly Femme Osage Creek, and south and east by the Missouri River, together with the accretions thereto formed, and is more particularly described as follows:—Beginning at a stone set in the middle line of the old bed of Femme Osage Creek as mentioned in said deed and at the upper end or [extermity] thereof, from which stone a cottonwood 36 inches in diameter bears N. 12¼° E., distant 63 links; thence following the meanders of the middle of the old bed of said Femme Osage Creek, down the same as

follows, N. 5° E., 4.80 chains to a stone, for corner; thence N. 21¼° E., 2.41 chains to a point on the line of the right-of-way of the Missouri, Kansas and Texas Railway; thence along and with the line of said right-of-way N. 67½° E., 6.21 chains; thence continuing with the middle line of said creek bed, due East 5.54 chains; thence N. 78½° E., 7.63 chains; thence N. 62° E., 5.02 chains; thence N. 69° E., 8.20 chains; thence N. 76° E., 3.04 chains; thence East 2.93 chains; thence S. 66° E., 2.75 chains; thence S. 46¼° E., .00 chains to the lower extremity of said old creek bed, it being the point on what at one time was the bank of the Missouri River; thence S. 49½° E., 3.65 chains
[fol. 24] to a point on the present bank of said river it being at the same time a point on the bank of Femme Osage Creek in low stages of the river; thence up said river bank; S. 29½° W. 7.58 chains to a point in the middle line of said Femme Osage Creek at its usual mouth; thence following the meanders of the said middle line up the creek as follows: S. 73½° W., 2.21 chains; S. 75° W., 5.50 chains West 2.31 chains; S. 88° W., 3.70 chains; S. 71° W., 2.18 chains; S. 59½° W., 10.30 chains; S. 60¾° W., 3.84 chains; S. 64° W., 6.81 chains; S. 75° W., 3.78 chains to a point on the middle line of said creek at a distance of 7.86 chains from the beginning as measured on a [curbe] bearing S. 23½° W., 7.88 chains to the beginning, containing 51.67 acres, more or less.

All of the above several tracts of land containing in the aggregate 478.65 acres.

The Government agrees to assume the easement held by the Ajax Pipe Line Company for a pipeline right of way across a portion of this land. The Government agrees to assume the easement held jointly by Charles W. Quint and Louis Quint, his wife; William Wackler, and Halie Wackler, his wife; Arthur W. Schaefer and Lena Schaefer, his wife; and Henry H. Seib and Hilda Seib, his wife, for a road one rod wide across a portion of this land.

Upon exercise of this option by the Government, the undersigned agrees to pay to R. Newton McDowell a commission of five per cent (5%) of the gross sales price as full payment for the services of said R. Newton McDowell in procuring such sale, preparing the deed or deeds for the conveyance of said land and arranging for settlement and closing of the transaction.

The undersigned hereby grants to the Government the right of immediate occupancy and use of the land for any purpose whatsoever from and after the acceptance by the Government of this option, which acceptance shall be within thirty (30) days after date hereof, until such time as said land is conveyed to the Government by the undersigned, the title approved by the Attorney General of the United States as required by law, and the agreed purchase price paid by the Government to the undersigned.

The undersigned further agrees that they will execute and deliver a general warranty deed conveying the fee simple title to the above described land to the United States of America, free and clear of all taxes, liens and encumbrances of every kind and character, including stamps, taxes and etc.; and the undersigned will also furnish, without cost to the Government, a certificate of title of The Kansas City Title Insurance Company to the said land satisfactory to the Attorney General of the United States and after examination of the deed and certificate of title by the Attorney General, the undersigned will have said deed recorded and will furnish a certificate of title of the said The Kansas City Title Insurance Company showing title to be good and marketable as vested in the United States of America, free of all liens and encumbrances. In the event the title shall be unmerchantable, the undersigned agrees to make said title merchantable at his own expense.

Upon furnishing of final certificate of title as above showing title to be vested in the United States of
[fol. 25] America, the agreed purchase price above mentioned will be paid by the Government to the undersigned.

If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings.

The occupancy and use of the land by the Government as granted aforesaid shall not be interrupted, but shall continue to be enjoyed by the Government throughout the pendency of said condemnation proceedings.

This Option is executed in triplicate at St. Charles, Missouri, this 24th day of December, 1940.

LOLA CASTLIO OLIVER,
MRS. B. I. CASTLIO,
A. RAY OLIVER.

Witness:
M. WILSON.
LT. A. RAY OLIVER, JR.
M. WILSON.

Accepted by and on behalf of the United States of America, this 28th day of December, 1940.

C. J. HARROLD,
[Mayor], Q. M. C.,
United States Army.

13. Defendants assert that if the Attorney General has finally approved the title to said land then and in that event, plaintiff being at the time of the institution of this action the owner of the full and complete fee simple title to the property in [questions] and being at said time in possession thereof, there would be nothing to condemn and

this would be a moot cause, and this Court would have no jurisdiction to proceed therein.

14. That defendants, in reliance upon the aforesaid contract, have surrendered possession to plaintiff and that plaintiff has for a long time past been in possession of said property and has been and is now using the same for its own purposes and benefits and plaintiff is estopped to pro- [fol. 26] ceed in this action contrary to its duties and obligations under said contract and is bound to carry on this proceeding in conformity with the provisions thereof which are expressly applicable hereto.

15. That defendants by this action are denied said agreed compensation for their property without due process of law and equal protection of the laws in violation of Section 1, Article XIV, of the Constitution of the U. S. and are deprived of their property without due process of Law in violation of Section 30, Article II of the Constitution of the State of Missouri.

Wherefore, It is prayed that the Court in its verdict, judgment, and decree fixing the award for the land described in plaintiff's petition at Seventy Thousand ($70,000.00) Dollars, plus interest at Six per cent (6%) from the date of acceptance of said contract above described, to-wit: December 28th, 1940, and requiring plaintiff to deposit said agreed purchase price and interest with the Clerk of this Court, the same to be disbursed by said Officer, pursuant to the decree entered in this proceedings.

ROBERT V. NIEDNER,
206 North Second Street,
St. Charles, Missouri,
Attorney for Defendants.

[fol. 27] Motion for Judgment for Plaintiff in Condemnation and for Defendants Fixing Compensation by Option.

(Filed April 6, 1945)

In the United States District Court
Eastern District of Missouri
Eastern Division

United States of America, Plaintiff, vs. Certain land situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, et al., Defendants.	Docket No. 960 At Law

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to enter judgment in this cause for the plaintiff for the condemnation of the real estate described in the petition filed in this cause and for defendants fixing defendants' compensation for the taking of said real estate in the amount named in the option, without interest, and as reasons for said motion states:

(1) That this suit was filed by plaintiff to acquire, by condemnation, the real estate described in the petition filed in this cause, that a Declaration of Taking was filed and the sum of $21,500.00 was deposited in the Registry of the Court as the estimated just compensation for said real estate;

(2) That prior to the filing of the petition in this cause the defendants and the plaintiff, through the War Department, had executed an option contract for the purchase by the United States of America from the defendants the said real estate for the sum of $70,000.00, being the amount of compensation fixed in said option contract;

(3) The United States Supreme Court in the case of Muschany vs. United States, 89 L. Ed. Adv. Op. 492 (1945)

has held an option contract to be valid and binding, which [fol. 28] option contract is identical with the provisions of the option contract in this case with the exception of the names of the owners, the description of the property and the amount of compensation;

(4) That the plaintiff, by virtue of this proceeding, is entitled to a judgment in condemnation against the lands described in plaintiff's petition for the purposes therein defined and against the defendants named in this cause, and against each and all of them, jointly and severally, as their rights may appear, and that the defendants, and each and all of them, jointly and severally are entitled to compensation in solido in the sum of $70,000.00, without interest, being the full amount of the compensation mentioned in said option contract;

(5) That R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, under the terms and conditions of the said option contract, have, or may have, some right, title or interest in and to the said sum of $70,000.00 mentioned in said option contract.

Wherefore, plaintiff moves the Court to enter judgment in this cause for the condemnation of the said real estate, fixing the compensation to be paid by plaintiff to the defendants in the sum of $70,000.00, and directing plaintiff to pay into the Registry of the Court the deficiency of $48,500.00 and to make an order citing all persons and corporations, including the said R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, claiming an interest in the said fund to appear in this Court and to set up and file their claims therefor.

HARRY C. BLANTON,
United States Attorney.

.....
Special Assistant United States Attorney.

Dated this 6th day of April, 1945.

Endorsed Filed: April 6, 1945. Jas. J. O'Connor, Clerk.

[fol. 29] Answer of Defendants Lola Castlio Oliver, A. Ray Oliver, and B. Irene Castlio to Plaintiff's Motion for Judgment in Condemnation and Fixing Compensation by Option and Without Interest, and Motion by Said Defendants for Judgment.

(Filed May 2, 1945)

Come now the defendants Lola Castlio Oliver, A. Ray Oliver, and B. Irene Castlio in response to the motion heretofore filed in this cause praying the Court to give judgment for plaintiff in condemnation and to fix defendants' compensation in the amount of the option contract therein referred to but without interest on said amount, and for answer to said motion, these defendants say:

(1) Defendants admit that, as alleged in paragraph (1) of said motion, the suit was filed, and that the declaration of taking was filed, and that the sum of $21,500.00 was deposited in the registry of this Court as the estimated just compensation for the value of the real estate described in the petition filed in this cause; and, in this connection, defendants allege that all of said things were done on the 6th day of June, 1941.

(2) These defendants admit that the contract referred to as the option contract was duly made and entered into as alleged in paragraph (2) of said motion.

(3) These defendants admit the statements contained in paragraph (3) of said motion.

[fol. 30] (4) These defendants admit that the plaintiff, by virtue of this proceeding, is entitled to a judgment in condemnation against the lands of these defendants described in the petition for condemnation long since filed herein, and they admit that the sum of $70,000.00 is the amount that was agreed upon in said option contract as the value of said property as of the date of taking thereof, as alleged in paragraph (4) of said motion; but they deny that the plaintiff has any right to avoid payment of interest on said amount, and these defendants allege that they are entitled to a judgment in their favor for the sum of $70,000.00, with interest at six per cent per annum on said

amount from the date of the taking of the lands described in said petition, which was on or about December 28, 1940, to the making of the deposit herein referred to on the 6th day of June, 1941, and interest at six per cent per annum on the sum of $48,500.00 (being the difference between said sum of $70,000.00 and the amount paid into this Court at the time of the filing of the declaration of taking, to wit, the sum of $21,500.00), from the said 6th day of June, 1941, until the same is paid, and these defendants pray that judgment be entered accordingly.

(5) These defendants allege that no person other than these defendants and George A. Schneider, a former tenant of these defendants, owned any interest whatever in the lands above referred to prior to the filing of the aforesaid declaration of taking by plaintiff on or about the 6th day of June, 1941, nor is any person other than these defendants and said George A. Schneider entitled to any part whatsoever of the proceeds of the judgment to be entered in this case fixing the amount of compensation to be awarded for said lands; and that, therefore, these defendants pray the Court to find by its order and judgment that these defendants and said George A. Schneider are, alone, entitled to the amount of such judgment and such interest [fol. 31] as the same may bear until the same is paid, as above set out.

ROBERT V. NIEDNER,
St. Charles Missouri,
IGOE, CARROLL, KEEFE & COBURN,
ROBERTS P. ELAM,
1530 Boatmen's Bank Building,
St. Louis, Missouri,
Attorneys for Lola Castlio Oliver, A. Ray Oliver, and B. Irene Castlio.

Receipt of a copy of the above and foregoing answer and motion is hereby acknowledged this 2nd day of May, 1945.

HARRY C. BLANTON,
United States Attorney.

[fol. 32] (Record Entry of Submission of Motion of Plaintiff for Judgment in Condemnation, etc.)

May 7, 1945.

Now motion of plaintiff for judgment for plaintiff in condemnation and for defendants fixing compensation by option, and on responsive pleadings thereto, and countermotion of defendants for payment of interest are submitted to the Court.

[fol. 33] (Transcript of Proceedings.)

(Filed October 3, 1945.)

District Court of the United States
in and for the
Eastern Division of the Eastern Judicial
District of Missouri

United States of America, Plaintiff, v. Certain Lands in St. Charles County, Missouri, Known as the Weldon Spring Area, Defendants.	Causes Numbered: 763 764 766 767 771 772 774 777 778 779 780 781 782 783 785 786 789 790 791 792 793 794 797 798 800 803 805 806 808 811 812 813 814 818 819

Note: It is stated by Mr. Elam and substantiated by Mr. Blanton, that at the hearing of certain motions before Judge Hulen on May 7, 1945, it was orally agreed by counsel that the record made before the three-Judge Court on April 4, 1945 should be considered as the record in the cases pending in Judge Hulen's Room (Court No. 3), among which is:

United States of America,
Plaintiff,
v.
Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castilo Oliver and A. Ray Oliver, her husband, and B. Irene Castilo,
Defendants.
} Cause No. 960.

[fol. 34] During the March Term, A. D. 1945 of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, at a hearing held on Wednesday, April 4, 1945, at two o'clock P. M., before the Honorable District Judges, George H. Moore, Richard M. Duncan, and Rubey M. Hulen, sitting as a three-judge Court, in Court Room No. 1, at St. Louis, Missouri, in the afore-mentioned causes, the following proceedings were had:

Appearances:

For the Government, Harry C. Blanton, Esq., United States Attorney; M. Walker Cooper, Esq., Special Assistant U. S. Attorney; Russell Vandivort, Assistant U. S. Attorney; J. Ritchey Gibbons, Esq., Assistant U. S. Attorney.

For Kansas City Title Insurance Company (Interpleader), A. N. Adams, Esq., 306 Title & Trust Building, Kansas City, Missouri.

For Landowner, Addie M. Sutton, in Cause No. 790; and for Landowner, Henry Henning, in Cause No. 819; and for other landowners in various other causes, Samuel M. Watson, Esq., 4254 Olive Street, St. Louis, Missouri.

For Landowners, Lola Castilo Oliver, et al., in Cause No. 960, Roberts P. Elam, Esq., Boatmen's Bank Bldg., St. Louis, Missouri.

For Various other Landowners in various other causes,
[fol. 35] William R. Gentry, Esq., Redick O'Bryan, Esq., William H. Allen, Esq., William J. Becker, Esq., William R. Gilbert, Esq., E. D. Franey, Esq., Harry Richards, Esq., Harvey B. Cox, Esq., Francis R. Stout, Esq., Richard D. Shewmaker, Esq. (Also others present.)

For R. Newton McDowell, Blatchford Downing, Esq.

[fol. 36] Judge Moore: We have upon the respective dockets here, each of us, some of these St. Charles County cases. It is the idea, I understand, Mr. Blanton, that they are all to be submitted today.

Mr. Blanton: Yes, Your Honor. That is our understanding.

The Court: I think it might be well to find out at this time how much time each side wants for arguments and who is to participate in the arguments.

Mr. Gentry: What do you say as to the time you will want, Mr. Blanton?

Mr. Blanton: Well, I don't know. I haven't estimated. I do not want to impose on the patience of the Court. I have not estimated how much time I may want. I want to make an extended argument, however.

Judge Moore: What do you mean by an extended argument?

Mr. Blanton: I would say an hour and a half.

Judge Moore: You will make the only argument for the Government?

Mr. Blanton: Yes, Your Honor.

Judge Moore: Who is going to make the arguments for the landowners?

Mr. Gentry: A number of attorneys had a conference in my office, Your Honor, and since Mr. Watson and I had [fol. 37] handled two cases in the Supreme Court of the

United States, they suggested and requested that we should present the matter in behalf of the various attorneys.

Judge Moore: You and Mr. Watson will be the only ones?

Mr. Gentry: I cannot say we will be the only ones.

Judge Moore: Any besides Mr. Watson and Mr. Gentry?

Mr. Gentry: One or two were not present in the conference, and I am not sure if they will be agreeable, too, all of them, or not.

Judge Moore: What is your idea of time, Mr. Gentry?

Mr. Gentry: Well, so far as my own part of the time is concerned, I think, if Your Honor please, if I have thirty minutes, that will be sufficient for me. I don't know how Mr. Watson feels about it.

Mr. Watson: I feel the same way, Your Honor.

Mr. O'Bryan: I might like the Court to give me five minutes when Blanton gets through—just five minutes.

Mr. Gentry: You mean five minutes the first time, or closing argument?

Mr. O'Bryan: No. Of all time.

Judge Moore: Judge Allen?

Mr. Allen: I should like not to exceed five minutes, Your Honor; perhaps shorter.

Mr. Becker: If the Court please, I should like to have five minutes, too.

[fol. 38] Mr. Gilbert: Your Honor, we may not want to add anything, but if there is anything we want to add, we would like the privilege.

Mr. Elam: Your Honor, we feel the same as Mr. Gilbert does. The probabilities are we will not want any time, but I should like five minutes.

Judge Moore: That will be agreeable. Be an hour and a half on a side; and landowners may divide that up—Mr. Watson, Mr. Gentry.

Mr. Gentry: In the meantime, before we start, if Your Honor please, there is one more of these cases in which I have just today been served with this motion. It is in Court Room No. 3, and I would like Judge Hulen's consent for me to file that same sort of answer to the motion and motion for judgment with interest as I have filed in other cases. I would like to have that.

Judge Hulen: Let it be filed.

Mr. Franey: If the Court please, in Cause No. 782, I would like to ask leave of Court, from Judge Duncan—this is from Court No. 2—to file motions of the defendant, Louis L. Nicolai, for judgments, asking for interest—similar motion as has been filed.

Judge Moore: Let it be filed.

Judge Duncan: Do you want the same order, Mr. Blanton?

[fol. 39] Mr. Blanton: Yes, Your Honor; I would like the same order. That likewise goes to the one in Judge Hulen's Court. I apprehend that perhaps Mr. Gentry's motion is not up for today, however. We have been filing these motions constantly and some of them are not returnable until next motion day.

Mr. Gentry: Well, this one you have served on me, I have answered, now. There are some others I have not.

Mr. Blanton: Some of them are not returnable. Thirty-five of them are returnable today.

Judge Hulen: Now, can the one in which Mr. Gentry just filed answer be presented?

Mr. Blanton: So far as we are concerned, it can.

Judge Hulen: Very well.

Mr. Blanton: Your Honor, before proceeding with the argument, I think that in order that the record may be clear we ought to make a few offerings.

And thereupon the plaintiff, to sustain the issues in its behalf, offered the following evidence:

Mr. Blanton: I would like to offer first a sample or a specimen form of this option contract, which is the matter in controversy, because the Court will be called upon to pass upon the construction of that contract. I will ask that that be marked Exhibit A.

[fol. 40] U. S. Exhibit A.

Option to Purchase Land 3156

Know All Men By These Presents: That the undersigned Lola Castlio Oliver and Mrs. B. I. Castlio (her mother) for and in consideration of One Dollar ($1.00), paid by the United States of America, hereinafter referred to as the Government, the receipt whereof is hereby acknowledged, hereby agrees for their heirs, executors and assigns, to sell and convey to the Government for the consideration of Seventy Thousand Dollars ($70,000.00) that certain piece or parcel of land situated in the County of St. Charles, State of Missouri, more particularly described as follows:

(Description omitted pursuant to stipulation as to record on appeal)

The Government agrees to assume the easement held by the Ajax Pipe Line Company for a pipeline right of way across a portion of this land. The Government agrees to assume the easement held jointly by Charles W. Quint and Louis Quint, his wife: William Wackler and Halie Wackler, his wife; Arthur W. Schaefer and Lena Schaefer, his wife: and Henry H. Seib and Hilda Seib, his wife, for a road one rod wide across a portion of this land.

Upon exercise of this option by the Government, the undersigned agrees to pay to R. Newton McDowell a commission of five per cent (5%) of the gross sales price as full payment for the services of said R. Newton McDowell in procuring such sale, preparing the deed or deeds for the conveyance of said land and arranging for settlement and closing of the transaction.

The undersigned hereby grants to the Government the right of immediate occupancy and use of the land for any purpose whatsoever from and after the acceptance by the Government of this option, which acceptance shall be within thirty (30) days after date hereof, until such time as said land is conveyed to the Government by the undersigned, the title approved by the Attorney General of the United States as required by law, and the agreed purchase price paid by the Government to the undersigned.

The undersigned further agrees that they will execute and deliver a general warranty deed conveying the fee simple title to the above described land to the United States of America, free and clear of all taxes, liens and encumbrances of every kind and character, including stamps, taxes and etc.; and the undersigned will also furnish, without cost to the Government, a certificate of title of The Kansas City Title Insurance Company to the said land satisfactory to the Attorney General of the United States and after examination of the deed and certificate of title by the Attorney General, the undersigned will have said deed recorded and will furnish a certificate of title of the said The Kansas City Title Insurance Company showing title to be good and marketable as vested in the United States of America, free of all liens and encumbrances. In the event the title shall be unmerchantable, the undersigned agrees to make said title merchantable at his own expense.

Upon furnishing of final certificate of title as above showing title to be vested in the United States of America, the agreed purchase price above mentioned will be paid by the Government to the undersigned.

If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be dis-

bursed by said officer pursuant to the decree entered in such condemnation proceedings.

The occupancy and use of the land by the Government as granted aforesaid shall not be interrupted, but shall continue to be enjoyed by the Government throughout the pendency of said condemnation proceedings.

This Option is executed in triplicate at St. Charles, Missouri, this 24th day of December, 1940.

LOLA CASTLIO OLIVER,
MRS. B. I. CASTLIO,
A. RAY OLIVER.

Witness:

M. WILSON,
LT. A. RAY OLIVER, JR.,
M. WILSON.

Accepted by and on behalf of the United States of America this 28th day of December, 1940.

C. J. HARROLD,
Major, Q. M. C.,
United States Army.

[fol. 41] Mr. Blanton: Then I would like to offer that, which is a portion of that contract, which is the contract that was entered into between the War Department and Mr. McDowell, which incorporated this Exhibit A; which I will ask be marked Exhibit B.

(The said document was marked by the reporter as U. S. Exhibit B.)

[fol. 42] U. S. Exhibit B.

W 766 QM
6099

Wednesday
October 23rd
1940

United States of America

Attention: Col. R. D. Valliant, Q. M. C.
Chief Real Estate Branch
Office Quartermaster General
War Department
Washington, D. C.

Dear Sir:

R. Newton McDowell, hereinafter in this letter called the "Optioner", makes the following proposal, which, when accepted by the United States of America, hereinafter called the "Government", shall constitute a binding agreement:

1. R. N. McDowell will undertake with diligence and promptness to use his best efforts in the acquisition by the Government of approximately 18,000 acres of land, more or less, located in St. Charles County, Missouri, in the vicinity of Weldon Springs as more specifically to be designated by the Government.

2. The Optioner, immediately upon acceptance of this proposal will with adequate and competent force of experienced men exhaust every reasonable effort to acquire within forty-five days of the effective date of this agreement, options for the purchase of said land to be taken in the name of the United States of America. At the expiration of such forty-five day period, the Government shall have the right, upon written notice, to require the Optioner to continue his efforts for a further period to obtain options; but at no time shall the termination of the Optioner's efforts to obtain options release him from performing all duties hereafter imposed upon him in connection with options then taken, and then or thereafter accepted.

3. The Optioner shall diligently endeavor to acquire such options, not only within such time, but at the reasonable value of the land to be acquired, and subject at all time to the directions of the Government. The form of option contracted to be executed, and all terms, covenants and conditions thereof, shall be on the form approved by the Government, and a copy of which is to be attached hereto and made a part hereof. It is understood that the Government is to have the exclusive right to take up or reject any option to any parcel of land optioned by said Optioner hereunder, except as hereinafter provided.

[fol. 43] 4. The Optioner will at his expense procure the services of the Kansas City Title and Insurance Company to attend to all administrative details of the closing of purchases under the options and the acquirement of deeds. The Optioner shall procure from the vendors in all cases where options are accepted on behalf of the United States, an order to the Kansas City Title and Insurance Company, to prepare certificates of title and deeds and it shall be his responsibility to see that said certificates of title and deeds are transmitted to the proper Government official for examination. The certificates of title, to be furnished by The Kansas City Title and Insurance Company will be on forms similar to the one attached hereto and made a part hereof and funds to effect closing of purchases by the Title Company will be furnished by the Government to the Title Company in form of checks payable to each vendor in the amount of the purchase price set forth in the accepted options.

5. Duly authorized agents of the Government shall have the right at any and all reasonable times and hours to inspect and take copies of all records and memoranda of the Optioner, his agents and attorneys evidencing his transactions herein contemplated.

6. This agreement shall not be assigned by the Optioner, in whole or in part, nor shall he part with

any interest herein, it being expressly understood and agreed that the expansion of personnel, or the payment of expenses, for the purposes herein contemplated shall in no event be construed a violation of this provision.

7. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. For all services hereunder the compensation of the Optioner shall consist solely of the five percent (5%) commission in each purchase, to be paid by the vendor, as more specifically set forth in the form of option attached hereto and made a part hereof.

If the foregoing proposal is acceptable to the Government, please so indicate by signing and returning to me one of the enclosed carbon copies hereof.

Very truly yours,

R. NEWTON McDOWELL.

The Foregoing proposal is hereby accepted for and on behalf of the United States of America, this 23rd day of October, 1940.

R. D. VALLIANT,
Colonel, Q. M. C.,
U. S. Army.

[fol. 44] Mr. Blanton: Then I would like to offer the minutes, and files, and pleadings that have heretofore been filed in these thirty-five cases, so that the entire picture may be before the Court.

(Minutes, files, and pleadings in the 35 cases offered in evidence.)

Mr. Blanton: Now, so far as I am concerned, those are the only offers we care to make prior to proceeding with the argument.

Judge Moore: Mr. Watson?

Mr. Watson: If the Court please, in all of my cases, I would like to adopt a certain portion of the record in the Calloway case; and by way of an explanation of that, I will say that at the time of the trial of the Calloway case it was understood by all of the attorneys and by the Court that any attorney in any subsequent Weldon Spring case might adopt the whole record in the Calloway case, or so much thereof as he chose. Now, with that in mind, I would like to adopt that portion of the record appearing on page 96 of the printed transcript of the record as it was pre-
[fol. 45] pared for the Court of Appeals, consisting of a question propounded to Colonel Dutton, the then acting officer for the Weldon Spring Ordnance Plant, and the answer:

> "Q. When did you arrive on the scene of the Weldon Spring Ordnance Plant?
> A. November 13, 1940."

In addition to that, I would like to adopt, on page 102 of the printed transcript of the record, the following admission by Mr. Blanton:

> "Mr. Blanton: If it will save time, I will admit the Government took possession of the land out there along about the time Colonel Dutton arrived. We think the valuation ought to be fixed as of that date."

That is all of the record that I care to adopt.

Mr. Blanton: Now, to that offer the Government desires to object, for three reasons:

In the first place, it is our view that the date that they took possession out there is immaterial, because we think that the amount of compensation that the owners are entitled to receive is fixed—definitely and certainly fixed by the option amount, which would include also anything that might be allowed to owners for use of the land while the Government was occupying it.

In the second place, we think that does not govern, [fol. 46] irrespective of whether they seek to recover under Section 258a of Title 40 or the Declaration of Taking statute—that that statute determines interest shall run from the date the declaration is filed, which would be some months after, as shown by the files heretofore offered in evidence.

In the third place, we think that the files here would show that as to Calloway there may have been given possession at one time, but that situation would not govern the time that the other owners gave up possession, and we object to the use of that testimony in any of these other two cases, if the purport is to show when owners surrendered possession, because we think some of them held possession clear up to the following summer.

Judge Moore: What date is that asking for?

Mr. Gentry: November 13th.

Mr. Watson: November 13th, Your Honor.

Judge Hulen: All motions the same in that respect?

Mr. Gentry: No, they are not, Your Honor.

Mr. Blanton: No, they are not.

Mr. Gentry: In mine, I have fixed December 3d, and I was informed that was the day the Government started to build the fence around the tract, and I fixed December 3d, which corresponds in one of my cases with the day on which that money in our option was accepted, and that was the 3d of December, and in all of mine I have set it [fol. 47] December 3d, and I was going to ask Mr. Blanton if he agreed on December 3d in all my cases.

Mr. Blanton: No, I cannot, because I don't think that is true. That may be when they started fencing, but they were not even requested to move until January.

Mr. Gentry: Ours, I think, gave immediate possession.

Mr. Blanton: If you did, you did that voluntarily.

Judge Moore: It will be received, subject to the objection.

Mr. Adams: Your Honor, I represent the Kansas City Title and Insurance Company, and we filed a claim in response to the notice in each one of these cases and, of course, we are ready to take them up, but I understand you want these taken up in the order of distribution.

Mr. Blanton: We understand that matter is not now before the Court.

Mr. Adams: Well, it is satisfactory to me to pass it until the order of distribution, but we were here in response to the Court's order—Court's formal notice.

Mr. Blanton: I also understand counsel representing Mr. McDowell is here, prepared to enter his appearance at the appropriate time, claiming the commission that is due him under his contract.

[fol. 48] Mr. Gentry: Well, we think that would have to go over, too.

Judge Moore: Those matters are not to be taken up today.

Mr. Gilbert: Your Honor, in case No. 814, Division 2, we actually delivered possession to the government at their request sometime in November, but their contract was not accepted by the Government officials until December 3d, and, being familiar with this record, I spoke to Judge Cooper when he served me with the motion, asking him if there would be any dispute about that date—that if there was, I wanted to bring somebody down to prove it, and he said he did not think there would be any dispute about that date. Now, if there is, I would like to go ahead with my proof.

Mr. Blanton: Yes, there is, because we don't think that possession was obtained at that time.

Mr. Gilbert: Well, we will ask leave then to put on proof—go ahead with the arguments on some of the law—and put on proof that there was, because we have already alleged in our motion that that is the date.

Judge Moore: All right.

Mr. Elam: In case No. 767, the situation is the same as that in Mr. Gilbert's case to which he has just [fol. 49] referred, and I also ask leave to adduce proof on the same.

Judge Moore: Very well.

Mr. Gentry: It seems to me, if Your Honor please, in all of these cases, since there are now 35 of them, there are different dates when possession was obtained, that we would have to have some proof in each and every case, which does not appear to be necessary now.

Judge Moore: Not today.

Mr. Gentry: Today—because you are after the general principle today as to what is to be done as to interest.

Mr. Becker: As to case No. 786, I make the same request, Your Honor.

Judge Moore: Very well.

Mr. Cox: Same situation in case No. 808, if Your Honor please.

Mr. Gentry: I want to correct one erroneous statement Mr. Blanton evidently made inadvertently in which he said the statute, referring to 258a, fixed the time in this way—the date of the taking, but he said the date of filing the declaration of taking; but that statute says that the judgment shall include interest on the amount finally awarded as the value of the property as of the date of taking; it does not say date of filing the notice of taking. Those are two different things, but I will elaborate on that in argument.

[fol. 50] Mr. Watson: If the Court please, I would like to say that I don't desire it understood that by incorporating this evidence in the record I am relying solely on that record as to the date of taking the possession, and I would like leave to introduce evidence at the proper time.

Judge Moore: That is our thought, that if it is ever determined that you are entitled to interest, then you will

be given an opportunity to make a showing as to what date.

Mr. Gentry: In each case.

Judge Moore: In each case.

Mr. O'Bryan: If the Court please, excuse me for not rising.

Judge Moore: That is all right. Keep your seat.

Mr. O'Bryan: Each one of these contracts is dated. The contract with the Government is dated. If they want to argue about these little things, they can all agree upon the date of that contract, because that is right in this Court in each case.

Judge Moore: That will be determined in each case, after we determine the general principle.

You may proceed, Mr. Blanton.

Which was all the evidence offered at the hearing.

(Here followed arguments.)

[fol. 51] Certificate of Court Reporter.

I, Floyd A. Buchanan, do hereby certify that I was present in the court room at this hearing on May 7, 1945, at St. Louis, Missouri, that I recorded the proceedings truly and accurately in shorthand, and that the foregoing is a true and accurate transcript of my shorthand notes of such proceedings up to the time that the arguments were commenced.

FLOYD A. BUCHANAN,
Court Reporter.

[fol. 52] Findings and Judgment.

(Filed May 14, 1945.)

In the United States District Court,
Eastern District of Missouri,
Eastern Division.

United States of America,
Plaintiff,
vs.
Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, et al.,
Defendants.

Docket No. 960.
At Law.

Now on this day, this Court having heretofore heard a motion filed by the plaintiff for judgment for plaintiff in condemnation and fixing the amount to be paid the defendants at the price agreed to by option contract referred to and set up in the answer filed by the defendants herein, and evidence having been offered in support of said motion, and arguments of counsel having been made and said motion taken under advisement, and the Court being now fully informed in the premises, doth Find, Adjudge, and Decree:

That the United States of America is plaintiff and the following named parties are defendants in this action:

Lola Castlio Oliver, if living or if dead, then The Unknown Consort, Heirs, and Devisees of the said Lola Castlio Oliver

Mrs. B. I. Castlio, also known as B. Irene Castlio, if living or if dead then The Unknown Consort, Heirs and Devisees of the said Mrs. B. I. Castlio, also known as B. Irene Castlio

A. Ray Oliver, if living or if dead, then The Unknown Consort Heirs and Devisees of the said A. Ray Oliver

Collector of Revenue of St. Charles County, Missouri

County of St. Charles, State of Missouri

Darst Bottoms Drainage and Protective District No. 2

J. M. Sydnor

George A. Schneider

St. Charles County, Missouri, Mortgagee

All Other Unknown Owners of all that tract of land in St. Charles County, Missouri, Known as Tract No. 254, and more particularly described herein;

[fol. 53] That prior to the filing of the petition herein and prior to any proceedings in connection therewith, including the filing of a declaration of taking in this cause, the defendants Lola Castlio Oliver, Mrs. B. I. Castlio and A. Ray Oliver and the plaintiff, through the War Department of the United States, entered into and executed an option contract, and said option contract was accepted by the plaintiff in accordance with the terms thereof, whereby and as a result of which action, the plaintiff agreed to purchase and said last named defendants agreed to sell to the plaintiff the real estate herein described, for an agreed compensation and sum of Seventy Thousand Dollars ($70,000.00);

That said last named defendants were at the time of executing said option contract and filing said declaration of taking the owners ~~in fee~~ simple of the land herein described;

That the Supreme Court of the United States has held binding on the parties thereto, an option contract for the sale of lands, the provisions of which and the circumstances surrounding the execution of which are the same as the option contract executed by the parties in this case, except as to the names of the landowners, the description of the property, and the sale price;

That under the terms and provisions of the option contract executed by the plaintiff and the last named defendants in this case the sum of Seventy Thousand Dollars

($70,000.00) is the purchase price agreed upon therein as the total compensation to which the last named defendants as landowners are entitled for said tract of land herein described, and that under said option contract, said last named defendants as landowners are not entitled to any further or additional compensation for said tract of land;

[fol. 54] That under the terms and provisions of said option contract the plaintiff, the United States of America, in the event that title is not accepted by the plaintiff, is entitled to perfect title by condemnation proceedings, and in the event of the perfecting of title to said tract of land by condemnation proceedings, the sale price set forth in the option contract for the tract of land herein described and described in said option contract, is to be the award and the total sum received by the defendants last named as landowners, as the agreed compensation for the taking of said land, without interest or any further, other, or additional compensation;

That prior to the decision of the Supreme Court of the United States holding said option contract valid and binding, the plaintiff herein caused to be filed herein a Declaration of Taking of said land by Henry L. Stimson, Secretary of War of the United States; that the filing of said Declaration of Taking and the vesting of title to the real estate herein described in the plaintiff by virtue thereof are not inconsistent or contrary to the terms of said option contract, executed by the plaintiff and last named defendants, as landowners herein, in order to perfect the title to said land in the plaintiff, providing the defendant landowners are paid and receive the agreed compensation as set out in said option contract for the real estate;

That upon the filing of said Declaration of Taking, the fee simple title to said tract of land therein described and herein described became vested in the United States of America, the plaintiff herein, and the title and possession of said tract of land was then and has ever since been in [fol. 55] the plaintiff, United States of America, and neither of the defendants has since had any right, title or interest in same;

That at the time of the filing of the said Declaration of Taking by Henry L. Stimson, Secretary of War of the United States, there was deposited in the registry of this Court the sum of Twenty-one Thousand Five Hundred Dollars ($21,500.00), as the then estimated just compensation for the appropriation of the fee simple title of said tract of land in said declaration described and herein described, subject to all existing highway and public utility easements, but including the fee underlying said existing easements, but said deposit was erroneous in failing to equal the agreed compensation set out in said option contract;

That on the 18th day of May, 1944, an Order of Partial Distribution was entered herein whereby the sum of $6,500.00 was disbursed leaving a balance of $15,000.00 in the Registry of the Court, subject to the further orders of this Court;

[fol. 56] That of the agreed compensation set forth in said option contract to be paid by plaintiff and received by the last named defendants as landowners for said tract of land, there remains to be deposited in the registry of this Court the sum of Forty-eight Thousand Five Hundred Dollars ($48,500.00);

That this proceeding in condemnation was instituted by the plaintiff as in such cases made and provided by the laws of the United States, including the issuance of process, writs, and notices, and that the defendants have been duly served with process as required by law, or have duly entered their appearance herein;

That plaintiff's petition and proceedings set forth a cause of action for the purpose of acquiring, by proceedings in condemnation, the fee simple title to the land described herein, which lands are necessary to provide for the establishment of an ordnance plant for the national defense of the United States of America and for other military use incidental thereto in connection with the Weldon Spring Ordnance Plant; and the awarding to the plaintiff in said condemnation proceedings of a judgment in condemnation will perfect title to the real estate herein described finally and completely in the plaintiff, and on payment to the defendant last named as landowners, of the

agreed compensation, will be in conformity with the terms of said option contract executed by plaintiff and the last named defendants;

That this Court has jurisdiction of the subject matter of this case, and all parties named as defendants;

That the land described in plaintiff's petition, known as Tract No. 254, is the land described in the Declaration of Taking referred to herein, and is bounded, defined, and described as follows:

(Description of property omitted pursuant to stipulation as to record on appeal.)

[fol. 57] And, that Plaintiff's said motion is sustained;

Now, Therefore, in accordance with the above findings of fact, it is Ordered, Adjudged, and Decreed:

That the plaintiff, United States of America, by virtue of this proceeding, is awarded judgment in condemnation against the premises described in Plaintiff's petition and above described, for the purposes herein defined and specified, and against the defendants herein and each and all of them, jointly and severally, as their title and rights may appear, and that the title in fee simple, subject to all existing highway and public utility easements, but including the fee underlying such existing easements, is vested in the Plaintiff, the United States of America, and has been vested in the Plaintiff, United States of America, upon and since the filing of the Declaration of Taking, and that the defendants and each and all of them, jointly and severally, are divested of any and all right, title, interest, and claim, of every nature and description in the lands above described;

That in accordance with the option contract executed by the plaintiff, United States of America, and the defendant landowners, and accepted by the United States of America, the defendant landowners are entitled to and there is awarded to them the sum of Seventy Thousand Dollars ($70,000.00), the agreed compensation set forth in said option contract; said sum under the terms and provisions of said option contract being without interest, and said

sum being the full amount to which defendant landowners are entitled in this cause, and any and all other persons who may be found entitled thereto as claiming by, through, or under them;

That the plaintiff shall pay into the registry of the Court forthwith the sum of Forty-eight Thousand Five Hundred Dollars ($48,500.00), in accordance with the terms of said option contract, said amount being the difference between [fol. 58] the agreed compensation price fixed in said option contract, and the amount heretofore deposited by the Plaintiff at the time of the filing of the Declaration of Taking, which amounts shall repose in the registry of this Court for disposition, use and benefit of the defendant landowners and other defendants claiming an interest therein, by and through said defendant landowners, in the way and manner and in proportion as this Court shall hereafter order, adjudge and decree;

That this cause shall be held open for entry of such further orders and judgments as may be just in the premises.

RUBEY M. HULEN,
Judge.

Dated this 14th day of May, 1945.

[fol. 59] (Docket Entry of Tender of certain Money into Court by Plaintiff.)

May 17, 1945.

Plaintiff tenders into court to the use and benefit of persons entitled thereto, deficiency in the sum of $48,500.00, which sum is deposited by the Clerk in the Registry.

[fol. 60] Order of Court Re Claims to Compensation and Distribution Thereof.

(Filed May 18, 1945.)

In the United States District Court,
Eastern District of Missouri,
Eastern Division.

United States of America,
Plaintiff,
vs.
Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, et al.,
Defendants.

Docket No. 960.
At Law.

It appearing to the Court upon suggestion of the Plaintiff, by its Attorneys, that there may be a conflict of claims to an interest in the compensation adjudged in this cause as damages; that all parties having an actual or potential interest in the premises have been duly served with process or notified as defendants herein and that the Court has jurisdiction over each and every defendant;

Now, Therefore, upon oral motion and request of said Attorneys,

It Is Ordered that all parties-defendant and other persons having or claiming any interest in or to the award of damages fixed by the judgment in this cause as to said Tract No. 254, be and the same are hereby required and ordered to file intervening petitions setting up their respective claims, if any, which they desire to present to all or any part of said award of damages, with the Clerk of this Court by the 6th day of June, 1945, or otherwise such claims may be disregarded and disallowed;

And It Is Further Ordered that said intervening petitions will be heard, time permitting, by this Court at St. Louis, Missouri, on the 13th day of June, 1945, but if not

reached on that day will be continued to such time as the Court may then and there fix;

And It Is Further Ordered that the plaintiff or its attorneys give notice, stating the title of this case as above set out and where pending and citing this Order herein, requiring and ordering intervening petitions to be filed herein by all parties-defendant or other persons having or claiming to have any interest in or to the said award of damages herein and the time and place set for hearing said intervening petitions, to all said defendants whose places of residence are known, by mailing to each of said defendants a copy of said notice and to all "not found" and "unknown" defendants and other persons by posting a copy thereof in the office of the Clerk of this Court at least ten (10) days before the 6th day of June, 1945.

RUBEY M. HULEN,
United States District Judge.

Dated this 18th day of May, 1945.

[fol. 61] Motion of Defendants Lola Castlio Oliver, Mrs. B. I. Castlio (Also Known as B. Irene Castlio) and A. Ray Oliver for a New Trial.

(Filed May 23, 1945.)

Come now the defendants Lola Castlio Oliver, Mrs. B. I. Castlio (also known as B. Irene Castlio) and A. Ray Oliver and move the Court to set aside and vacate the findings and judgment entered herein on the 14th day of May, 1945, and to grant these defendants a new trial herein, for the reasons following, to wit:

(1) The Court erred in sustaining plaintiff's motion to enter judgment for the "option contract" price of the land condemned herein without any interest, as the total just compensation for the land so condemned.

(2) The Court erred in overruling the motion of these defendants for judgment for said "option contract" price, together with interest as prayed for in

said motion, as the total just compensation for such land.

(3) The Court erred in entering judgment for the "option contract" price of the land so condemned, without any interest, as the total just compensation for such land.

(4) The Court erred in failing and refusing to enter judgment for said "option contract" price, together with interest as prayed for in these defendants' [fol. 62] said motion, as the total just compensation for such land.

(5) The Court erred in excluding from its judgment herein the interest which was due and to become due on the "option contract" price, and in entering judgment without including any interest, as a part of the total just compensation for the land herein condemned.

ROBERT V. NIEDNER,
IGOE, CARROLL, KEEFE & COBURN,
ROBERTS P. ELAM,
Attorneys for Defendants Lola Castlio Oliver, Mrs. B. I. Castlio (also known as B. Irene Castlio) and A. Ray Oliver.

Receipt of a copy of the above and foregoing motion is hereby acknowledged this ..... day of May, 1945.

.....
United States Attorney.

[fol. 63] (Record Entry of Submission and Overruling of Motion of Defendants for New Trial.)

June 4, 1945.

Now come the parties by their respective attorneys, whereupon motion of defendants for a new trial is submitted to the Court and such motion is, by the Court, after due consideration thereof, overruled.

[fol. 64] Amended Petition of Defendants Mrs. B. I. Castlio, Also Known as B. Irene Castlio, Lola Castlio Oliver and A. Ray Oliver for Distribution of Amount on Deposit in the Registry of the Court in This Cause.

(Filed June 13, 1945.)

Come now Mrs. B. I. Castlio, also known as B. Irene Castlio, Lola Castlio Oliver and A. Ray Oliver, defendants in the above entitled cause, in response to a notice by the attorney for plaintiff to all interested persons to file petitions for distribution of the amount on deposit in the registry of the Court in this cause, and respectfully state and show to the Court that:

(1) These defendants were, prior to the filing of the petition and the declaration of taking filed in this cause, the owners of the entire fee simple title to all of the lands described in plaintiff's petition, and are entitled to all of the compensation for said lands, with the exception and in the proportions referred to hereinafter.

(2) The defendant Mrs. B. I. Castlio, also known as B. Irene Castlio, was, prior to the filing of the petition and declaration of taking filed herein, the owner of a life estate in said lands.

(3) The defendants Lola Castlio Oliver and A. Ray Oliver were, prior to the filing of the petition and declara-
[fol. 65] tion of taking filed herein, the owners of the fee simple remainder in said lands, subject to the aforesaid life estate in the defendant Mrs. B. I. Castlio, also known as B. Irene Castlio.

(4) The defendant George A. Schneider was, prior to the filing of the petition and declaration of taking filed herein, a tenant upon said lands, and had, prior to the filing of said petition and declaration of taking, entered into an agreement with these defendants whereby he would accept $650.00 of the proceeds from said lands as and for his full compensation for his interest as such tenant.

(5) One George Jungermann was, prior to the filing of the petition and declaration of taking filed herein, a tenant

upon said lands, and had, prior to the filing of said petition and declaration of taking, entered into an agreement with these defendants whereby he would accept $430.00 of the proceeds from said lands as and for his full compensation for his interest as such tenant.

(6) No other person, firm, corporation or municipality, county, state or government, has any lawful claim to or against the fund constituting the compensation to be paid by plaintiff for said lands.

(7) The defendant Mrs. B. I. Castlio, also known as B. Irene Castlio, was born November 2, 1862, and the value of her aforesaid life estate in the amounts heretofore deposited in the registry of this Court in this cause, commuted under the provisions of Section 3522, Revised Statutes of Missouri, 1939, is $16,968.00, which said commuted value is subject to charges as follows:

Value of tenancy of defendant George A. Schneider	$ 650.00
Value of tenancy of George Jungermann.	430.00
[fol. 66] Brought forward	1,080.00
Taxes paid Collector of St. Charles County	194.00
Assessments paid Darst Bottoms Drainage and Protective District No. 2	110.62
	$1,384.62,

leaving a balance due defendant Mrs. B. I. Castlio, also known as B. Irene Castlio Oliver, of $15,583.38, to which she is entitled out of the amount on deposit in the registry of this Court in this cause.

(8) The defendants Lola Castlio Oliver and A. Ray Oliver, through the defendant Lola Castlio Oliver, have heretofore withdrawn $6,500.00 of the amounts heretofore deposited in the registry of this Court in this cause, and are entitled to $47,036.62 of the amount on deposit in the registry of this Court in this cause.

(9) The defendant George A. Schneider has heretofore received, out of the amount heretofore withdrawn by the

defendants Lola Castlio Oliver and A. Ray Oliver from the registry of this Court in this cause, the sum of $200.00, and is entitled to $450.00 of the amount on deposit in the registry of this Court in this cause.

(10) Said George Jungermann is entitled to $430.00 of the amount on deposit in the registry of this Court in this cause.

Wherefore, these defendants respectfully pray the Court to make and enter an order in this cause distributing the amount on deposit in the registry of this Court in this cause ($63,500.00) as follows:

[fol. 67]

Name of Distributee	Amount
Mrs. B. I. Castlio, also known as B. Irene Castlio	$15,583.38
Lola Castlio Oliver and A. Ray Oliver	47,036.62
George A. Schneider	450.00
George Jungermann	430.00
	$63,500.00

and these defendants further pray that the order of this Court ordering said distribution be made without prejudice to the defendants, or to the plaintiff, with regard to any claim or claims of the parties respecting interest upon the "option contract" price for said lands, or as a part of the full just compensation for said lands.

ROBERT V. NIEDNER,
IGOE, CARROLL, KEEFE & COBURN,
ROBERTS P. ELAM,
Attorneys for Defendants Mrs. B. I. Castlio, also known as B. Irene Castlio, Lola Castlio Oliver and A. Ray Oliver.

Receipt of a copy of the above and foregoing petition is hereby acknowledged this 13th day of June, 1945.

HARRY C. BLANTON,
United States Attorney.

[fol. 68] Order of Final Distribution.

(Filed August 6, 1945.)

In the United States District Court
Eastern District of Missouri
Eastern Division.

United States of America,
Plaintiff,
vs.
Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, et al.,
Defendants.
Docket No. 960
At Law.

On the 13th day of June, 1945, came the parties herein and this cause came on to be heard on the motion of plaintiff, United States of America, for an Order of Distribution among the defendants or the persons entitled thereto, of the money now in the Registry of the Court in the sum of $63,500.00, being the sum of $15,000.00 remaining after the distribution of $6,500.00 of the $21,500.00 deposited with the Declaration of Taking filed in this case on June 6, 1941, and $48,500.00, the amount of the deficiency, deposited by plaintiff, pursuant to the option contract and the Findings and Judgment entered May 14, 1945; and the cause was on that day submitted for order of distribution and taken under advisement by the Court.

It appears to the Court that the petitioner, United States of America, gave notice under Order made in this cause, requiring all claimants to said award to file intervening [fol. 69] petitions by June 6, 1945, and that said intervening petitions would be heard on June 13, 1945; that said petitioner caused notice to be given to all defendants of known address by mailing to each of them a notice as required by said Order and by posting a copy of the notice as required by said Order in the office of the Clerk of this Court at St. Louis, Missouri; said notice was so mailed and posted more than ten days before the 6th day

of June, 1945; and the Court having seen and heard said motion and the evidence adduced thereon by the parties herein as well as the arguments of counsel finds that the defendants and other persons have interests therein as hereinafter set forth and doth find affecting the premises as follows:

The Court finds that the petitioner, United States of America, has paid into the Registry of the Court the sum of $70,000.00, the compensation fixed by the option contract and the judgment of this Court entered on May 14, 1945;

The Court further finds that at the time of the filing of the Declaration of Taking in this case B. Irene Castlio, Lola Castlio Oliver and A. Ray Oliver were the owners of the land being condemned in this case.

The Court further finds that under the terms and provisions of the option contract mentioned in the Findings and Judgment entered herein on May 14, 1945, R. Newton McDowell has filed a claim for the sum of $3,500.00, and that Kansas City Title Insurance Company has filed a claim for $1,050.00;

[fol. 70] The Court further finds that the Plaintiff, the United States of America, for and in behalf of the Collector of Internal Revenue of the Sixth Collection District of Missouri has filed an intervening claim and a supplemental intervening claim against the said R. Newton McDowell by which it claims by virtue of certain tax liens mentioned therein to be entitled to the said sum of $3,500.00 due to the said R. Newton McDowell under the terms of the said option contract;

The Court further finds that it was stipulated and agreed by and between the parties herein that the total amount of the commissions claimed by the said R. Newton McDowell in his intervening claims filed in the several cases now pending in this Court (Court Number 3) are not sufficient in amount to pay the total amounts mentioned and claimed in the intervening claims and the supplemental intervening claims of the plaintiff, the United States of America for and in behalf of the Collector of Internal Revenue for the Sixth Collection District of Missouri,

based on tax assessments filed in the said several cases pending in this Court (Court Number 3);

The Court further finds that the intervening claim and the supplemental intervening claim of the United States of America for the Collector of Internal Revenue for the Sixth Collection District of Missouri having come on for hearing and thereupon R. Newton McDowell, having heretofore filed his intervening claim to a portion of the funds paid into the Registry of the Court in this condemnation proceeding, files and presents a "Motion of R. Newton Mc-
[fol. 71] Dowell with respect to tax claims of the United States of America", praying the Court to determine the nature of the issues, if any, as between the United States and said Collector on the one hand and himself on the other, and if the same be held to be adversary as between him and the United States and the Collector, to dismiss the same for want of jurisdiction of the subject matter, and if not so adversary then that an order herein for the delivery of funds to said United States or the Collector be without prejudice to the rights of said McDowell or any party claiming under him to demand refund of all or any part thereof and to bring suit against the Collector or the United States for recovery of all or any portion of said taxes, interest or penalties believed by him to have been improperly or invalidly assessed and;

The Court having examined the said intervening claims and heard statements and arguments of counsel for the said parties respectively, determines and decrees that this proceeding is not adversary as between the United States and said Collector on the one hand and said McDowell on the other, and the merits or validity of the tax assessments are not involved herein, but only the right of the Collector to take into his possession by virtue of his tax liens and assessments whatever funds are awarded or allowed to McDowell by virtue of the latter's intervening claims herein, and that the order entered herein on said claims
[fol. 72] of the United States and said Collector is and shall be without prejudice to the right of said McDowell or parties claiming under, by or through him, to demand refund of, and seek or sue for recovery of, any amount of said taxes, interest and penalties believed by him to have been improperly or invalidly assessed.

The Court finds that taxes in favor of the United States were assessed against R. Newton McDowell in the amounts and the assessment lists received by the Collector of Internal Revenue for the Sixth Collection District of Missouri on the dates, all as alleged in the claim and supplemental claim of the United States and said Collector filed herein and said assessments constitute a lien on the funds in the Registry of the Court herein awarded and adjudged to R. Newton McDowell;

The Court thereupon finds and determines that R. Newton McDowell is entitled to five per cent of the deposits made in this case and said sums amount to $3,500.00 which sum is ordered paid and disbursed to said Collector of Revenue for the Sixth Collection District of Missouri;

[fol. 73] The Court further finds that the claim of the Kansas City Title Insurance Company in the sum of $1,050.00 should be paid out of the said money deposited in the Registry of the Court in this cause;

The Court finds that by agreement George A. Schneider, a tenant on the lands condemned in this case prior to the filing of the Declaration of Taking, is entitled to $650.00 of the compensation for said lands and that he has heretofore been paid in order of partial distribution entered in this case on May 18, 1944 the sum of $200.00 leaving a balance of $450.00 now due to the said George A. Schneider;

The Court further finds that George Jungermann, a tenant on the lands condemned in this case prior to the filing of the Declaration of Taking, is entitled to $430.00 of the compensation for said lands;

The Court further finds that B. Irene Castlio was the owner of a life estate in the tract of land condemned in this case and that the value of her life estate commuted under provisions of Section 3522, revised statutes of Missouri, 1939, is $15,865.08;

The Court further finds that the value of the life estate of the said B. Irene Castlio is subject to certain charges as follows: the value of the tenancy of the defendant George A. Schneider, $650.00; the value of the tenancy of

George Jungermann, $430.00; taxes paid to the Collector of St. Charles County, at the time of the parties distribution heretofore made in this case on May 18, 1944, $194.00; and assessments due the Darst Bottoms Drainage and Protective District No. 2, paid at the time of the partial distribution entered in this cause on May 18, 1944 in the sum of $110.62;

[fol. 74] The Court further finds the total amount of the said charges against the commuted value of the life estate of the said B. Irene Castlio is $1,384.62 and that after such total charges are deducted from the commuted value of the life estate of B. Irene Castlio in the sum of $15,865.08 the net value of the life estate of the said B. Irene Castlio is $14,480.46;

The Court further finds that Joseph M. Sydnor filed a claim for $250.00 as the reasonable market value of logs, cord wood, posts and other merchantable timber that had been severed from, but was still lying upon, the lands condemned in this case at the time of the filing of the Declaration of Taking in this cause and that said claim should be disallowed;

It Is Therefore Ordered that James J. O'Connor, Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, shall disburse at this time out of the funds in the Registry of this Court in this cause, the sum of $58,950.00 in the manner following:

To: George A. Schneider, tenant, the sum of.$ 450.00
(Mail check to Roberts P. Elam, c/o Igoe, Carroll, Keefe & Coburn, Attorneys, 1530 Boatmen's Bank Bldg., St. Louis 2, Missouri)

To: George Jungermann, tenant, the sum of.$ 430.00
(Mail check to Walker Wooldridge, Attorney, Wentzville, Missouri)

To: B. Irene Castlio, life estate, the sum of..$14,480.46
(Mail check to Roberts P. Elam, c/o Igoe, Carroll, Keefe & Coburn, Attorneys, 1530 Boatmen's Bank Building, St. Louis 2, Missouri)

To: Lola Castlio Oliver and A. Ray Oliver, her husband, the sum of $43,589.54

(Mail check to Roberts P. Elam, c/o Igoe, Carroll, Keefe & Coburn, Attorneys, 1530 Boatmen's Bank Building, St. Louis 2, Missouri)

It Is Further Ordered that James J. O'Connor, Clerk of the United States District Court for the Eastern District of [fol. 75] Missouri, Eastern Division, shall disburse on or after three months after this date the sum of $4,550.00, the balance of the funds on deposit in the Registry of this Court in the manner following:

To: Kansas City Title Insurance Company, the sum of ..... $ 1,050.00

(Mail check to Cobbs, Logan, Roos and Armstrong, Attorneys, 506 Olive St., St. Louis 1, Missouri)

To: United States of America, for and in behalf of the Collector of the Sixth Collection District of Missouri, the sum of ..... $ 3,500.00

(Mail check to Dan M. Nee, Collector of Revenue, Kansas City 6, Missouri)

The Court further finds that upon disbursement under the terms of this Order, full and final payment will have been made for each and every interest in and to the property involved in this cause.

RUBEY M. HULEN,
United States District Judge.

Dated this 2 day of August, 1945.

[fol. 76] Motion of Defendants Lola Castlio Oliver and A. Ray Oliver, Her Husband, and B. Irene Castlio for a New Trial Upon, or in the Alternative to Modify, Order of Final Distribution.

(Filed August 14, 1945.)

Come now the defendants Lola Castlio Oliver and A. Ray Oliver, her husband, and B. Irene Castlio, and move the Court to set aside and vacate the order of distribution entered herein on the 6th day of August, 1945, and to grant these defendants a new trial thereon, or in the alternative to modify said order of final distribution, for the reasons following:

(1) The Court erred in finding in said order of final distribution that:

> "The Court further finds that it was stipulated and agreed by and between the parties herein that the total amount of the commissions claimed by the said R. Newton McDowell in his intervening claims filed in the several cases now pending in this Court (Court Number 3) are not sufficient in amount to pay the total amounts mentioned and claimed in the intervening claims and the supplemental intervening claims of the plaintiff, the United States of America for and in behalf of the Collector of Internal Revenue for the Sixth Collection District of Missouri, based on tax assessments filed in the said several cases pending in this Court (Court Number 3);"

for the reason that these defendants did not make or enter, and there is no evidence in the record in this cause showing or tending to show that these defendants made or entered, into such a stipulation or agreement as found by the Court.

[fol. 77] (2) The Court erred in finding and determining that R. Newton McDowell is entitled to five per cent of the deposits made in this case, which percentage amounts to $3,500.00, and in ordering said sum disbursed to the Collector of Revenue for the Sixth Collection District of Missouri or to the United States of America for and in

behalf of the Collector of the Sixth Collection District of Missouri.

(3) The Court erred in finding that the claim of the Kansas City Title Insurance Company in the sum of $1,050.00 should be paid out of the money deposited in the registry of this Court in this cause, and in ordering said sum of $1,050.00 paid out of the registry of this Court in this cause to the said Kansas City Title Insurance Company.

(4) The Court erred in failing and refusing to distribute the $63,500.00 remaining on deposit in this Court in accordance with the amended petition of these defendants for distribution as follows:

Name of Distributee	Amount
Mrs. B. I. Castlio, also known as B. Irene Castlio	$15,583.38
Lola Castlio Oliver and A. Ray Oliver	47,036.62
George A. Schneider	450.00
George Jungermann	430.00
	$63,500.00

and in failing and refusing to make such distribution without prejudice to the defendants, or to the plaintiff, with regard to any claim or claims of the parties respecting interest upon the "option contract" price for the lands condemned in this cause, or as a part of the full just compensation for said lands.

(5) The Court erred in its finding as follows:

> "The Court further finds that upon disbursement under the terms of this Order, full and final payment will have been made for each and every interest in and to the property involved in this cause."

[fol. 78] in that said finding is immaterial to said order of final distribution, and purports and tends to prevent these defendants from prosecuting an appeal upon their claim to interest as a part of the full just compensation to which they are entitled for the property condemned in this cause.

(6) The Court erred in its finding in said order of final distribution as follows:

> "The Court further finds that upon disbursement under the terms of this Order, full and final payment will have been made for each and every interest in and to the property involved in this cause."

in that said finding is contrary to the law and the facts of this case under the law.

(7) The Court erred in failing and refusing to make its order of final distribution without prejudice to these defendants, or to the plaintiff, with regard to any claim or claims of the parties respecting interest upon the "option contract" price for the lands condemned in this cause, or as a part of the full just compensation for said lands.

ROBERT V. NIEDNER,
IGOE, CARROLL, KEEFE & COBURN,
ROBERTS P. ELAM,
Attorneys for Defendants B. Irene Castlio and Lola Castlio Oliver and A. Ray Oliver, Her Husband.

I hereby certify that I served the above and foregoing motion for a new trial on the 14th day of August, 1945, by mailing a copy thereof to each of the following: Cobbs, Logan, Roos & Armstrong, Attorneys for Kansas City Title Insurance Company, 506 Olive Street, St. Louis, Missouri; Harry C. Blanton, United States Attorney, United States Courthouse & Custom House, 12th & Market Streets, St. Louis, Missouri; and Blatchford Downing, Attorney for R. Newton McDowell, 2000 Fidelity Building, Kansas City, Missouri.

ROBERTS P. ELAM.

[fol. 79] (Docket Entry relating to Cost Bond on Appeal.)

August 22, 1945.

Cost bond of defendants Lola Castlio Oliver, et al on appeal, filed. Defendants deposit the sum of $250.00 in cash in lieu of other surety.

[fol. 80] (Order extending time to file Transcript on Appeal.)

(Filed September 14, 1945.)

Upon oral application therefor, it is hereby

Ordered, that defendants, Lola Castlio Oliver and A. Ray Oliver, her husband, and B. Irene Castlio, [illegible] hereby are granted an extension of time to and including November 12, 1945 within which to file the record on appeal and docket this cause in the United States Circuit Court of Appeals for the Eighth Circuit.

Dated this 14 day of September, 1945.

R. M. DUNCAN,
Judge.

[fol. 81] (Memorandum and Order on overruling of Motion of Defendants for New Trial, or, in the Alternative to modify Order of Final Distribution.)

(Filed September 27, 1945.)

This case is now before the Court on the landowners' motion for a new trial upon, or in the alternative, to modify, order of final distribution.

On May 14, 1945, this Court made and entered a judgment awarding Seventy Thousand Dollars ($70,000.00) as the agreed compensation for the land acquired by the plaintiff by virtue of a certain option contract referred to in the pleadings in this case. Over the protest of defendant landowners, no interest was allowed on the compen-

sation agreed to in the option contract. The plaintiff was ordered to pay into the registry of the Court Forty-eight Thousand Five Hundred Dollars ($48,500.00), being the difference between the amount previously paid into the Registry of the Court by the plaintiff in this case and the agreed option price for the land in suit, of Seventy Thousand Dollars ($70,000.00). On August 6, 1945, after notice and hearing on respective claims filed for the fund on deposit in the registry of the Court, an order was entered of final distribution of the fund in the registry of the Court to the respective claimants and the landowners, as the Court then found their interest in the fund, and it is this order that is now attacked by the motion under consideration. The order of August 6, 1945, concludes as [fol. 82] follows: "The Court further finds that upon disbursement under the terms of this order, full and final payment will have been made for each and every interest in and to the property involved in this cause."

At the time the order of final distribution was made, no appeal had been taken from the judgment of May 14, 1945. The landowners have since initiated proceedings to appeal from the judgment and order of final distribution, as they have a right to do, and, of course, should it be subsequently determined that additional compensation is due the landowners or that this Court's findings on any of the claims were erroneous, this Court will be bound to follow such ruling. The fact that the landowners may take down from the registry of the Court funds found to be due them, in the order of August 6, 1945, should and will not prejudice them in any manner to attack by appropriate proceedings the orders or judgments in this case and to receive hereafter any additional compensation which might be found to be due them.

In other cases of a kindred nature (763, 766, 769, 779, 783, 786, 789, 790, 796, 803, 806, 819, 826, 830, 839, 843, 856, 859, 860, 863, 866, 869, 873, 876, 879, 979, 986, 999, 1003, 1006, and 1019) we have made orders similar to the orders and judgments in this case. We believe it was well understood by all parties, plaintiffs, landowners, and lien claimants, that the withdrawal of funds on deposit in

the registry of the Court, found to be due the landowners would not prejudice their right to receive any further sums that might thereafter be adjudged to be due them. If not, this memorandum should leave no doubt on the subject.

Order.

Defendants' Motion for a New Trial, or, in the Alternative, to Modify Order of Final Distribution, is over-ruled.

RUBEY M. HULEN,
Judge.

[fol. 83] Statement of Points.

(Filed October 10, 1945.)

In the United States District Court
Eastern District of Missouri
Eastern Division,

United States of America,
Plaintiff,

v.

Certain Land Situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, et al.,
Defendants.

Docket No. 960
At Law.

The points upon which defendants-appellants intend to rely in this appeal are as follows:

(1) The Court erred in sustaining plaintiff's motion to enter judgment for the "option contract" price of the lands condemned herein, without any interest, as the total just compensation for the lands so condemned.

(2) The Court erred in overruling the motion of these defendants-appellants for judgment for said "option contract" price, together with interest at six per centum on said amount from the date of the taking of the lands con-

demned in this cause, which was on or about December 28, 1940, to the making of the deposit of $21,500.00 into the registry of the Court on the 6th day of June, 1941, and interest at six per centum per annum on the sum of $48,500.00 (being the difference between the said "option contract" price of $70,000.00 and the amount paid into Court at the time of the filing of the Declaration of Taking, to wit, the sum of $21,500.00), from the said 6th day of June, 1941, until the 17th day of May, 1945, as the total just compensation for said lands.

(3) The Court erred in entering judgment for the [fol. 84] "option contract" price of the lands so condemned, without any interest, as the total just compensation for such lands.

(4) The Court erred in failing and refusing to enter judgment for said "option contract" price, together with interest at six per centum on said amount from the date of the taking of the lands condemned in this cause, which was on or about December 28, 1940, to the making of the deposit of $21,500.00 into the registry of the court on the 6th day of June, 1941, and interest at six per centum per annum on the sum of $48,500.00 (being the difference between the said "option contract" price of $70,000.00 and the amount paid into Court at the time of the filing of the Declaration of Taking, to wit, the sum of $21,500), from the said 6th day of June, 1941, until the 17th day of May, 1945, as the total just compensation for said lands.

(5) The Court erred in excluding from its judgment herein the interest which was due and to become due on the "option contract" price, and in entering judgment without including any interest, as a part of the total just compensation for the lands herein condemned.

ROBERT V. NIEDNER,
IGOE, CARROLL, KEEFE & COBURN,
ROBERTS P. ELAM,
Attorneys for Defendants-Appellants Lola Castlio Oliver, A. Ray Oliver, and B. I. Castlio (also known as B. Irene Castlio).

Receipt of a copy of the above and foregoing Statement of Points is hereby acknowledged, and it is stipulated and agreed that the same shall become a part of the record on appeal herein, this 9th day of October, 1945.

HARRY C. BLANTON,
United States Attorney,
Attorney for Plaintiff.

[fol. 85] (Stipulation as to Contents of Transcript on Appeal.)

(Filed October 3, 1945.)

It is hereby stipulated by and between the parties hereto that the record on appeal herein shall consist of the following items:

(1) Motion for leave to file petition and for order of summons, filed June 6, 1941.

(2) Order entered on said motion for leave to file petition, etc.

(3) Petition in condemnation filed June 6, 1941 (omitting therefrom the description of the lands sought to be condemned).

(4) Declaration of Taking filed June 6, 1941 (omitting therefrom that part of Schedule A, thereto attached, relating to Tract No. A, and omitting therefrom the attached plats).

(5) Order and judgment entered upon the Declaration of Taking on June 6, 1941 (omitting therefrom the description of the lands taken).

(6) Answer of defendants Lola Castlio Oliver, A. Ray Oliver, and Mrs. B. I. Castlio, filed December 23, 1941.

(7) Motion of plaintiff for judgment for plaintiff in condemnation, and for defendants fixing compensation, [fol. 86] filed April 6, 1945.

(8) Answer of defendants Lola C. Oliver, A. Ray Oliver and B. Irene Castlio to plaintiff's motion for judgment in

condemnation and fixing compensation by option and without interest, and motion by said defendants for judgment, filed May 2, 1945.

(9) Minute entry of submission of plaintiff's motion for judgment for plaintiff in condemnation and for defendants fixing compensation, and answer of defendants Lola C. Oliver, et al., thereto, entered May 7, 1945.

(10) Transcript of evidence adduced at hearing on April 4, 1945 (which evidence, by agreement, was that upon which the motions were submitted May 7, 1945).

(11) Findings and judgment entered May 14, 1945.

(12) Minute entry of payment into court, of $48,500.00 to the use and benefit of persons entitled thereto as compensation for the lands condemned, entered May 17, 1945.

(13) Order filed and entered on May 18, 1945 directing all persons having or claiming any interest in or to the award of damages fixed by judgment in this cause to file intervening petitions setting up their respective claims by June 6, 1945, and setting said petitions for hearing on June 13, 1945.

(14) Motion of defendants Lola Castlio Oliver, A. Ray Oliver and B. Irene Castlio for a new trial, filed May 23, 1945.

(15) Order overruling said motion of defendants for a new trial, entered June 4, 1945.

(16) Amended intervening petition of defendants Mrs. B. I. Castlio, etc. et al., for distribution of amount on deposit in registry, filed June 13, 1945.

(17) Order of final distribution filed and entered August 6, 1945.

(18) Notice of appeal filed August 14, 1945.

(19) Motion of defendants Lola Castlio Oliver, A. Ray [fol. 87] Oliver, and B. Irene Castlio for a new trial upon, or in the alternative to modify, order of final distribution, filed August 14, 1945.

(20) Minute entry of filing of bond for cost on appeal, entered August 22, 1945.

(21) Order granting defendants Lola C. Oliver, A. Ray Oliver, and Mrs. B. Irene Castlio an extension of time to and including November 12, 1945, within which to file transcript of record on their appeal herein in the United States Circuit Court of Appeals, filed and entered September 14, 1945.

(22) Memorandum and order of the Court overruling defendants' motion for a new trial upon, or in the alternative to modify, order of final distribution, filed and entered on September 27, 1945.

(23) This stipulation.

Dated St. Louis, Missouri, this 3rd day of October, 1945.

HARRY C. BLANTON,
United States Attorney,
Attorney for Plaintiff.

IGOE, CARROLL, KEEFE & COBURN,
ROBERT V. NIEDNER,
ROBERTS P. ELAM,
Attorneys for Defendants Lola Castlio Oliver, A. Ray Oliver, and B. Irene Castlio.

[fol. 88] (Clerk's Certificate to Transcript.)

United States of America,
Eastern Division of the
Eastern Judicial District
of Missouri. } ss.

I, James J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, Do Hereby Certify the above and foregoing to be a full, true and complete transcript (except in so far as the same is restricted by the stipulation of the designation of the record on appeal heretofore set out) of the record and proceedings in case No. 960 entitled United States of America, Plaintiff vs. Certain Land situate in St. Charles County, State of Missouri, Known as Tract No. 254, and Lola Castlio Oliver, Mrs. B. I. Castlio, A. Ray Oliver; Collector of Revenue of St. Charles County, Missouri; County of St. Charles, State of Missouri; wherein Lola Castlio Oliver, A. Ray Oliver, her husband, and B. Irene Castlio, are defendants-appellants and the United States of America is appellee, as fully as the same remains on file and of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said court at office in the City of St. Louis, in said Division of said District this 10th day of October, in the year of our Lord, Nineteen Hundred and Forty-five.

JAMES J. O'CONNOR,
Clerk, U. S. District Court.

(Seal)

By JOHN J. JARVIS,
Deputy Clerk.

Filed Oct 13 1945. E. E. Koch, Clerk.

[fol. 76] And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz.:

(Appearance of Mr. Roberts P. Elam and Mr. Richmond C. Coburn as Counsel for Appellants.)

United States Circuit Court of Appeals

Eighth Circuit

Lola Castlio Oliver, et al., Appellants,
No. 13,174. vs.
United States of America.

The Clerk will enter my appearance as Counsel for the Appellants.

ROBERTS P. ELAM
RICHMOND C. COBURN

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 13, 1945.

(Appearance of Mr. Robert V. Niedner as Counsel for Appellants.)

The Clerk will enter my appearance as Counsel for the Appellants.

ROBERT V. NIEDNER,
County Court House,
St. Charles, Missouri.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 30, 1945.

[fol. 77] (Appearance of Mr. Harry C. Blanton, Mr. M. Walker Cooper and Mr. J. Edward Williams as Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

HARRY C. BLANTON,
U. S. Attorney.

M. WALKER COOPER,
Special Asst. U. S. Attorney.

J. EDWARD WILLIAMS,
Acting Head, Lands Division,
Department of Justice, Washington, D. C.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 17, 1945.

(Appearance of Mr. S. Russell Vandivort as Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

S. RUSSELL VANDIVORT,
Asst. U. S. Attorney.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 30, 1945.

[fol. 78] (Order of Submission.)

January Term, 1946.

Thursday, January 10, 1946.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Richmond C. Coburn for appellants, continued by Mr. Harry C. Blanton, United States Attorney, for appellee, and concluded by Mr. Richmond C. Coburn for appellants.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 79] (Opinion.)

United States Circuit Court of Appeals
Eighth Circuit.

No. 13,174.

Lola Castlio Oliver and A. Ray Oliver, her Husband, and Mrs. B. I. Castlio, (also known as B. Irene Castlio), Appellants, vs. United States of America, Appellee.	Appeal from the District Court of the United States for the Eastern District of Missouri.

[April 9, 1946.]

Mr. Richmond C. Coburn (Messrs. Igoe, Carroll, Keefe & Coburn and Mr. Robert V. Niedner were with him on the brief) for Appellants.

Mr. Harry C. Blanton, United States Attorney (Mr. J. Edward Williams, Acting Head, Lands Division; Mr. M. Walker Cooper, Special Assistant to the United States Attorney; Mr. S. Russell Vandivort, Assistant United States Attorney; and Mr. Roger P. Marquis and Miss Wilma C. Martin, Attorneys, Department of Justice, were with him on the brief), for Appellee.

Before SANBORN, THOMAS, and RIDDICK, Circuit Judges.

RIDDICK, Circuit Judge, delivered the opinion of the Court.

This is one of the numerous controversies growing out of the acquisition by the United States of a large tract of land near Weldon Springs in St. Charles County, Missouri, to be used as a location for a Government ordnance plant. The efforts of the War Department to purchase the land in the area selected for the ordnance plant, its acceptance of approximately 270 contracts from owners to convey their tracts to the United States for stipulated sums, and its unsuccessful attempt to repudiate all of the contracts of purchase which had not been fully executed on the conclusion that the contracts violated the statutory prohibition of a cost-plus-a-percentage-of-cost system of contracting in section 1 of the National Defense Act of July 2, 1940, 54 Stat. 712, 50 U.S.C.A., Appendix, § 1171, are detailed in the opinion of the District Court for the Eastern District of Missouri in *United States* v. *Certain Land Situate in St. Charles County, Missouri*, 46 F.Supp.

921; and in the opinions of this court in *United States* v. *Muschany*, 139 F.2d 661, and of the Supreme Court in *Muschany* v. *United States*, 324 U.S. 49.

This case involves one of the purchase contracts. Since the decision of the Supreme Court in *Muschany* v. *United States, supra*, the validity of contract is established. The sole question on this appeal is whether the owners of the land are entitled to recover interest in addition to the price stipulated in the purchase contract in a proceeding instituted by the United States, following its attempted repudiation of the contract, to acquire the land by condemnation. The contract was executed by the appellant landowners on the 24th day of December, 1940, and accepted on behalf of the United States by the authorized agent of the War Department on the following 28th day of December. The contract is entitled "Option to Purchase Land." It recites that for the consideration of $1.00 paid by the United States the owners agree to sell and convey to the United States for a consideration of $70,000 the land, together with the right of immediate occupancy and use of the land for any purpose whatsoever from and after acceptance by the United States of the purchase contract until such land is conveyed to the United States by the owners and title approved by the Attorney General of the United States and the agreed purchase price paid by the United States to the owners. The landowners agree to furnish the Government a good and merchantable title to the land, free of all liens and encumbrances, and further that the Government may acquire the land by condemnation in the event the title offered by the landowners is not approved by the Attorney General. The paragraph with reference to condemnation is as follows:

"If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which

said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings."

After taking possession under the contract and following the conclusion that the purchase contract was void, the United States on June 6, 1941, instituted proceedings for condemnation of the land. On that date the United States filed its declaration of taking and deposited in the registry of the court $21,500 as estimated just compensation. On the same day an order was entered vesting title in the United States. The landowners filed an answer, setting up the purchase contract, insisting upon its validity, and requesting the court to fix the award for the land at the sum stipulated in the contract with interest at six per cent per annum from the date of the acceptance of the contract by the Government. Perhaps because the parties were awaiting final decision in the Muschany case as to the validity of the purchase contract there brought in question, which was identical with the contract involved in the present case so far as material to the question here, nothing more was done until after the decision of the Supreme Court in that case came down on February 5, 1945. On April 6, 1945, the United States filed a motion in the condemnation proceedings, reciting that the validity of the purchase contract had been sustained by the Supreme Court in the Muschany case, and asking an order of the District Court directing the United States to pay into the registry of the court the difference between the sum of $21,500 theretofore deposited as estimated compensation and the price stipulated in the purchase contract and for judgment in condemnation in accordance with the contract. To this motion the land-

owners filed a response, consenting to judgment in condemnation in favor of the United States for the price stipulated in the purchase contract, plus interest thereon from the date of acceptance of the contract by the Government until the deposit of the estimated compensation made with the declaration of taking in the condemnation proceedings on June 6, 1941, and with interest at six per cent thereafter on the difference ($48,500) between the amount deposited with the declaration of taking and the price stipulated in the purchase contract. On May 14, 1945, the trial court entered a judgment sustaining the motion of the United States and denying interest. The landowners appeal.

The right of an owner to just compensation for his land taken by the United States is guaranteed by the Constitution. Just compensation is the fair value of the land paid contemporaneously with its taking. Where the taking precedes the payment of fair value, the owner is deprived of the use of the land or of the use of its equivalent in money for the time between the taking and payment. In such cases, in order that the owner shall not suffer loss and shall receive the just compensation guaranteed him by the Constitution, he is entitled to interest upon the fair value of the land from the date of the taking until payment. *United States* v. *Rogers*, 255 U.S. 163, 169; *Seaboard Air Line Ry. Co.* v. *United States*, 261 U.S. 299, 305-306. This constitutional right of the owner whose property is taken is recognized in the Act under which the condemnation in this case proceeded. The statutory provision is that just compensation "shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded

as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court." 40 U.S.C.A., § 258a.

Contracts between the Government and a landowner made in contemplation of acquisition of land by condemnation, fixing the value of the land for that purpose, are valid. *Danforth* v. *United States*, 308 U.S. 271, 282; *Bank of Edenton* v. *United States*, 4 Cir., 152 F.2d 251, 254. Plainly, where after such a contract the United States acquires possession of the land in the contemplated condemnation proceedings and fails to make payment of the agreed value contemporaneously with the taking, interest must be allowed the owner from the date of taking until payment in order that the constitutional requirement of just compensation may be satisfied. Conversely, where the payment of the agreed value and the taking in the condemnation proceedings are contemporaneous, interest is not allowable. Nothing more is held in the Danforth case. It must also be true that where, as in the present case, the agency of the Government acquiring the land for the United States is authorized to acquire it by purchase, contracts made by it on behalf of the United States with the landowners may validly fix the net amount to be received by the landowner from the United States for the taking of the land either by purchase or by condemnation. In such a contract the parties may bind themselves to a consideration which may be either greater or less than just compensation in the constitutional sense. That this was the effect of the contract in question here we have no doubt. By it, the United States acquired the possession and the use of the land until title vested in it by the payment of the stipulated purchase price. See *Muschany* v. *United States*, *supra*, p. 62.

In the present case the United States having repudiated its purchase contract, the landowners could have accepted this repudiation and in the condemnation proceedings recovered, as a part of just compensation, interest at the statutory rate upon the amount awarded them in excess of the amount paid into the registry of the court at the time of the declaration of taking. They were, however, within their rights in insisting upon the validity of the purchase contract and upon its controlling effect upon the question of the compensation to be received by them, as they did throughout these proceedings. Having taken this position, their right to recover interest upon the sum stipulated in the purchase contract depends upon the interpretation of that contract which, of course, must be considered in its entirety. The landowners are not entitled to insist upon provisions of the contract favorable to them while rejecting others which are unfavorable.

There is no provision in the contract for the payment of interest on the stipulated consideration, nor does the contract fix a time within which payment is required. Delay in the payment of the agreed compensation for the time necessary to clear title by condemnation or otherwise is clearly implied. The purchase price stipulated in the contract is not merely the agreed fair value of the land made in contemplation of its acquisition by the United States through condemnation, but the agreed consideration to be paid the landowners by the United States for both the land and its exclusive possession and use from the effective date of the purchase contract until payment by the United States. The purchase price stipulated in the contract may be fairly regarded, at the very least, as the agreed equivalent of just compensation for the taking of the land by condemnation or by purchase. By their successful defense of the validity of the purchase contract, the landowners converted the condemnation proceed-

ings from an ordinary adversary proceeding into one controlled, as to the amount of their recovery, by the terms of the purchase contract. They may not complain that the resulting award to them was, in the words of the contract on which they rely, "in accordance with all the terms and provisions of this option."

The fact that the United States did not proceed with condemnation proceedings as contemplated by the purchase contract, but under the mistaken belief that the contract was void, can not justify the award of interest not required by the contract. In the absence of a statute or an express contract providing for it, interest can not be added to an obligation of the United States. *United States* v. *North Carolina*, 136 U.S. 211; *United States* v. *Rogers*, *supra*, p. 169; *Seaboard Air Line Ry. Co.* v. *United States*, *supra*, p. 304. The allowance of interest upon the consideration stipulated in the purchase contract would be tantamount to awarding interest against the United States by way of damages for delay in the payment of an obligation. "* * * interest does not run upon claims against the Government even though there has been a default in the payment of the principal." *Smyth* v. *United States*, 302 U.S. 329, 353.

We have not overlooked the decision in *United States* v. *Baugh*, 5 Cir., 149 F.2d 190. We think that case may be distinguished from this on the ground that the contract there involved was interpreted by the court as fixing only the fair value of the land for the purpose of a condemnation then proceeding. If, however, this distinction is not warranted, we are unable to follow the decision in the Baugh case.

The judgment of the District Court is affirmed.

[fol. 87] (Judgment.)

United States Circuit Court of Appeals

Eighth Circuit

March Term, 1946.

Tuesday, April 9, 1946.

Lola Castlio Oliver and A. Ray Oliver, her husband, and Mrs. B. I. Castlio (also known as B. Irene Castlio),
Appellants,
No. 13,174. vs.
United States of America.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

April 9, 1946.

IN THE

United States Circuit Court of Appeals

FOR THE EIGHTH CIRCUIT.

LOLA CASTLIO OLIVER and A. RAY OLIVER, Her Husband, and MRS. B. I. CASTLIO (Also Known as B. IRENE CASTLIO), Appellants, vs. UNITED STATES OF AMERICA, Appellee.	No. 13,174. Civil.

Appeal from the District Court of the United States for the Eastern District of Missouri.

APPELLANTS' MOTION FOR REHEARING.

Now come the appellants, within fifteen days after the date of the judgment entered by this Court on the 9th day of April, 1946, and move the Court to set aside its opinion, decision and judgment and to order a rehearing of the issues involved in this appeal, for the reason that the said opinion of the Court inadvertently overlooked certain material matters of law and fact involved in this cause, in the following particulars, to wit:

I.

The Court, in its opinion, treats the case as if it were one for the specific performance of a contract and inadvertently overlooks the fact that this is a condemnation

suit in which the Government obtained the title to the land in question under the provisions of 40 U. S. C. A., Section 258a, under the express terms of which it is bound to pay interest.

The unexpressed premise of the Court's opinion seems to be that this is a suit on a contract for specific performance, and since the Government cannot be held to pay interest in a suit on a contract unless the contract specifically calls for the payment of interest, therefore no interest is allowable. In so doing, the Court overlooks the fact that this is not a suit against the Government for the specific performance of any contract. The District Court would have no jurisdiction of such a suit under 28 U. S. C. A., Section 41 (20), where the Tucker Act limits the jurisdiction of the Federal District Courts in suits on contracts against the Government to controversies involving not more than $10,000. To repeat, this is not a suit for specific performance of a contract. If this Court believes it is, then it is forced to the conclusion that neither the District Court nor this Court has any jurisdiction of the cause.

This Court mentions the existence of 40 U. S. C A., Section 258a, only once in its opinion, on page 4, where it comments that the statute recognizes the constitutional rights of the landowner. The truth of the matter is that the Government in this cause obtained all of its rights to the land in question solely under the provisions of this statute. The option contract did not purport to pass title. The Government repudiated the option contract and did not receive title under any deed. It obtained title by its Declaration of Taking and the order and judgment on the Declaration of Taking, which stated "that the title to said land in fee simple absolute, vested in the United States of America upon the filing of said Declaration of Taking."

Since the Government did not obtain title under the option contract, and did obtain title only by virtue of the

Declaration of Taking filed under 40 U. S. C. A., Section 258a, the Government's rights and duties in obtaining title are measured by that statute with one exception: The Supreme Court of the United States, in **Muschany v. United States**, 324 U. S. 49, 65 S. Ct. 442, held that in the condemnation suit the Government is bound by the contract insofar as the contract price establishes the fair value of the land. The Supreme Court did not hold that the relationship between the Government and the landowners rested solely on contract because, if so, the Government would not now have title to the land. That title it obtained only by virtue of the statute.

Having obtained the benefit of the statute, the Government is bound by the terms of the statute to the payment of interest. Phrased differently, the effect of **Muschany v. United States**, supra, is to ingraft upon the rights and duties of the parties under the statute, the provisions of the contract so far as it sets the fair value of the land.

Considerable space in the opinion is taken up with an interpretation and construction of the contract, but in so doing no mention is made of the effect of the provisions of the statute which provide for interest. Really, the only room for interpretation of the contract is to start with the premise that since the Government obtained its rights under the statute which provides for interest, the contract must be examined solely with a view to determine whether or not the landowners expressly waived their rights to interest under the statute. That approach to the interpretation of the contract is overlooked by the Court.

If the Court starts with the central fact in this suit that the rights of the Government in this condemnation suit spring solely from the statute, it cannot treat the matter as if it were specifically enforcing the contract against the Government and as if 40 U. S. C. A., Section 258a, were not pertinent. This is either a suit in con-

demnation in which the Government is bound by the statute under which it acted, unless the parties have expressly waived the provisions of the statute by contract, or it is an action for specific performance of a contract, in which case the United States District Court had no jurisdiction of the case at all.

II.

As we understand the opinion of the Court, its holding is fairly summarized as follows: The landowner is constitutionally guaranteed just compensation for his land, which is the fair value of the land when payment is contemporaneous with taking, but where payment is subsequent to taking, includes interest from the date of taking until payment. When the Government and the landowner enter into a contract in contemplation of condemnation, the contract must fall into one of two classes: (a) contracts between the Government and a landowner, made in contemplation of acquisition of land by condemnation "fixing the value of the land for that purpose," fall within the constitutional requirement for the payment of interest; or (b) contracts which "fix the net amount to be received by the landowner from the United States for the taking of the land either by purchase or by condemnation," as to which no interest need be paid. To determine whether interest is payable, the contract in question must be interpreted "in its entirety" and placed in either category (a) or category (b). The determining factors in classifying a contract are said to be:

(1) If there is no provision for interest, the contract falls under classification (b);

(2) If the contract does not fix a definite time within which payment is required or contemplates delay in payment, the contract falls in category (b).

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So far as this Court holds that a contract which covers only the fair value of the land is subject to the constitutional and statutory requirements for the payment of interest, but a contract in which the purchase price by agreement covers both the fair value of the land and the use of the land by the Government until payment therefor is not subject to the payment of interest by the Government because, by construction, the equivalent of that interest was originally included by the parties in the purchase price, we are in accord. We believe, however, that the tests applied by this Court in attempting to draw a line between the two classes of contracts mentioned are faulty and will not stand analysis.

The nature of the contract cannot be determined by the absence of a provision specifically calling for the payment of interest. Interest is guaranteed both under the Constitution and by statute. Thus, if a landowner should follow this Court's opinion, pages 4 and 5, and draw up a contract in contemplation of acquisition of land by condemnation "fixing the value of the land for that purpose," this Court says that as to such a contract "interest must be allowed the owner." Thus such a contract which did not in any way, shape or form mention interest would, however, be subject to the constitutional and statutory requirement that interest be paid. Yet, on page 6 of this Court's opinion, in interpreting the contract in this case, it relies upon the fact that "there is no provision in the contract for the payment of interest on the stipulated consideration" in reaching the conclusion that this contract did not merely establish the fair value of the land. It is evident from the opinion, on pages 4 and 5, that a specific provision for interest is not necessary for a class (a) contract because interest follows by virtue of constitutional and statutory requirements. Yet on page 6 of the opinion the fact that there is no provision for in-

terest seems to be determinative to the Court that the contract is a class (b) contract. (Evidently this confusion springs from the Court's unexpressed premise that it is dealing with a suit for the specific performance of a contract and that in such a suit interest cannot be allowed against the Government unless the contract specifically calls for it.)

The second test used by the Court in its opinion to determine the nature of the contract (Opinion, page 6) is whether or not the contract fixes a definite time within which payment is required or contemplates delay in payment. Again the Court has inadvertently used a faulty test.

Suppose that in accordance with the opinion of this Court, on pages 4 and 5, a contract should be drawn up between the Government and a landowner which did not provide for the giving of a deed but provided solely for the acquisition by the Government of the land by condemnation and provided that in such contemplated condemnation suit the parties, by agreement, fixed "the value of the land for that purpose" and that the agreed value of the land should be deposited by the Government with its petition in condemnation. Presume the circumstances at the time to be as they were in 1940, that the Government desired immediate possession by virtue of an emergency but did not have manpower or program sufficient to allow an immediate filing of the condemnation suit, so it provided for immediate possession in the contract. Sometime later the Government files the condemnation suit under 40 U. S. C. A., Section 258a, but instead of depositing the agreed amount, deposits only a small fraction thereof, and after a lapse of some four years, the Government is forced by decision of the Supreme Court to pay the agreed amount. Would the Government then have to pay interest? This Court, in its opinion (p. 5), says:

"Plainly, where after such a contract the United States acquires possession of the land in contemplated condemnation proceedings and fails to make payment of the agreed value contemporaneously with the taking, interest must be allowed the owner from the date of taking until payment in order that the constitutional requirement of just compensation may be satisfied."

Yet, in such a case where the contract between the parties followed the exact wording of this Court's opinion, the agreement would have failed to fix an exact date on which payment was to be made and delay in the payment would be clearly implied from the contract, so that despite the test of failure to fix an exact date and contemplated delay, this Court would, under its opinion, on pages 4 and 5, be forced to allow interest. It would appear from the opinion itself that the lack of definite date and delay are not accurate tests.

Another illustration may exhibit the fallacy of this test. Suppose a contract to purchase land was entered into by the Government with the landowner. No mention is made at all of possible condemnation, but the contract merely sets out the purchase price and provides that upon the furnishing of a deed and certificate of title by the seller, the Government shall pay the agreed purchase price. It is hornbook law that the contract would not be found invalid, though no date for performance was specifically stated, since any court would find that the contract was to be performed in a reasonable time. Suppose that after the contract was entered into, but before the termination of a reasonable time, the Government repudiated the contract and condemned the land under 40 U. S. C. A., Section 258a, and the Government deposited only a small fraction of the agreed purchase price. Under **Muschany v. United States**, supra, and **Danforth v. United States**, 308

U. S. 271, 60 S. Ct. 231, the contract would be binding in condemnation as to the fair value of the land. What about interest? The Government did not take title by the contract and no deed was given. The parties did not have interest in mind at all in the contract. Obviously the contract was intended to cover the fair value of the land. The tests used by this Court, on page 6 of its opinion, would indicate that no interest would be paid; but under the holding in this opinion, on pages 4 and 5, interest would have to be allowed. Why? The parties only agreed on one thing, namely, the fair value of the land. The right to interest would follow not from the contract but from the Constitution and condemnation statute. Yet no mention would have been made of interest and there would have been no specific date for payment and delay would have been contemplated. It is submitted that the tests used by this Court, on page 6 of its opinion, are wholly erroneous and contradictory to this Court's opinion on pages 4 and 5. (Again, the reason for the contradiction in the opinion evidently springs from this Court's failure to recognize the fact that the rights of the Government as to this land originated solely in condemnation by virtue of the statute. The right to interest did not originate in contract and the rules as to allowing interest in suits on a contract against the Government are not applicable. Where the Government obtains its rights by condemnation, it must pay interest unless the contract waives the right of the landowner to interest.)

But if it is necessary that the option contract in this case fix a date by which payment should be made, the contract does fix such a date. The contract provided that upon furnishing a final certificate of title, the Government should pay the purchase price (Record, p. 37). Under elementary law the landowner would have only a reasonable time to furnish such a certificate of title. The contract also provides that if the title should not be approved by

the Attorney General, the Government should file a condemnation suit and "upon filing its petition in such proceedings deposit said agreed purchase price with the Clerk of said court." Thus, the contract itself furnishes the date of payment with reasonable certainty in the absence of condemnation and specifically furnishes the date for payment in the event of condemnation, namely, the date that the Government filed its condemnation petition.

What other tests can be applied to this contract to determine whether it falls into class (a) or class (b)? Perhaps the wording of the contract so far as it relates to the consideration is as good a test as any to determine the intent of the parties as to whether they were dealing with an amount which represented the "value of the land" or the value of the land plus the use of the land by the Government until payment. The option contract refers to the consideration on six occasions in the following terms:

(1) "To sell and convey to the Government for the consideration of * * *."

(2) "Gross sales price."

(3) "The agreed purchase price."

(4) "The agreed purchase price."

(5) "Under a consent verdict fixing the award at the agreed valuation."

(6) "Said agreed purchase price."

It may be admitted that the phrase "agreed purchase price" is not completely determinative. It is obvious from the record, however, that that phrase was used in connection with the idea that the landowner was presently agreeing to sell his land for the consideration named, with the whole deal to be consummated in the near future in a reasonable time. Certainly the phrase cannot be twisted to mean that the parties contemplated that the Govern-

ment would delay payment for a period of 4½ years and that the purchase price was intended to cover both the fair value of the land and the use of the land during that period. The truth of the matter is that when those phrases were used, the only thing the parties contemplated was an immediate sale and immediate payment of the purchase price, and that what they had in mind was the value of the land at that time, not just compensation in the sense of fair value of the land plus the use of it for 4½ years.

At the one point in the option contract where condemnation is contemplated, the contract provided that the Government could acquire the land by condemnation proceedings "under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will, upon filing its petition in said proceedings, deposit said agreed purchase price with the clerk of said Court." Here the term "consent verdict" is used, the term "award" is used, and the term "agreed valuation" is used. All of these terms are synonymous only with the idea that the consideration there referred to represented the fair value of the land plus, at most, the use by the Government of the land until it filed its petition in condemnation. The use of these terms must be construed in the light of the condemnation procedure where the verdict of the jury, after an appeal from commissioners, fixes the fair value of the land on the date of taking, and the Court, under the provisions of the statute, adds to the fair value of the land six per cent interest from the date of taking, the total sum being just compensation. This Court has inadvertently overlooked this provision of the contract in determining whether or not the parties intended to contract only for the fair value of the land or for full and just compensation including fair value and the use of the land for 4½ years while the Government failed to pay.

For this Court to say, in its opinion, that by this con-

tract the landowners intended to hand over the land to the Government and receive the purchase price from the Government at some indefinite time in the future, in this case almost 4½ years from the time the Government took possession, and that the parties intended by their contract that the purchase price covered the use by the Government of the land during all of that period and the retention by the Government of the money during that period where the contract specifically provided that payment should be made the moment the Government filed its petition in condemnation constitutes an inadvertent overlooking by the Court of the express terms of this contract. If the intent of the contracting parties is the true test rather than the ones mentioned by this Court (and having in mind that the landowner in no wise prepared this contract, and that a contract must be interpreted against the party drawing it), then it follows that the conclusion that it was the intent of the landowners in these cases to forego interest by this contract must be arrived at by some highly artificial tests having no relation to the actual state of mind of the parties as expressed in the contract.

III.

The Court has inadvertently overlooked the grounds for the decision in **United States v. Baugh**, 149 Fed. (2d) 190 (C. C. A. 5), in distinguishing that case.

In **United States v. Baugh**, supra, the Government and the landowners entered into a contract whereby the Court, in condemnation, was authorized to adjudge "just compensation for the lands taken, to be in the sum of * * *." The contract in no wise mentioned interest and did not set any specific date for payment. The Court held (1) that under the Constitution a landowner is entitled to interest on the fair value of its property, and that a stipulation in regard to compensation which does not cover interest in no wise disturbs the constitutional right of the landowner

to interest; (2) that the constitutional right to interest will not be presumed to have been waived merely by the failure to specifically provide for it in writing. It is interesting to note that the amount which the Government agreed to pay for the land was referred to as "just compensation for the lands taken", but nevertheless the Court held that the landowner was also entitled to interest on the amount fixed by the contract in order to satisfy the constitutional guaranty of just compensation.

For purposes of possible review of this Court's opinion, it is felt that it would be fair if this Court flatly stated that it refused to follow the ruling in the **Baugh** case, as it obviously does. The distinguishing of the **Baugh** case in this opinion, in view of the wording of the contract in that case, as compared with the wording of the contract in the present case, is really only a refusal to follow that decision, and such holding should be made explicit.

Respectfully submitted,

IGOE, CARROLL, KEEFE & COBURN,
RICHMOND C. COBURN,
THOMAS L. CROFT,
ROBERT V. NIEDNER,
Attorneys for Appellants.

Richmond C. Coburn, one of the attorneys for appellants, hereby certifies that the foregoing Motion for Rehearing is filed for the sole purpose of calling the Court's attention to material matters of law or fact inadvertently overlooked by the Court in its opinion, as is shown by its opinion and the foregoing Motion for Rehearing, and that said Motion is not made for the purpose of delay, but is filed in good faith and is believed to be meritorious.

RICHMOND C. COBURN,
Attorney for Appellants.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 23, 1946.

[fol. 100] (Order denying Motion of Appellants for Rehearing.)

March Term, 1946.

Tuesday, April 30, 1946.

Motion for rehearing filed by appellants in this cause having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

April 30, 1946.

(Motion of Appellants to Stay Issuance of Mandate.)

Comes now the appellants in the above entitled cause, and move the Court to stay the issuance of its mandate herein for thirty days from April 30, 1946, the date of the denial herein of appellants' petition for rehearing, and thereafter until final disposition of said cause by the Supreme Court of the United States, provided that within such stay, there is filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the petition for certiorari, record, and brief have been filed, as provided by Rule 16 of this Court.

And in support of this motion the said appellants state that they will in good faith file in the Supreme Court of the United States a petition for a writ of certiorari to review the judgment of April 9, 1946, affirming the judgment of the District Court, and the order and judgment of April 30, 1946, overruling and denying appellants' petition for a rehearing in this cause.

Wherefore, appellants respectfully pray that the issuance of the mandate of this Court be stayed and withheld for [fol. 101] thirty days and that if within such stay there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court that the petition for certiorari, record, and brief have been filed, such stay shall continue until final disposition by the Supreme Court.

RICHMOND C. COBURN,
IGOE, CARROLL, KEEFE & COBURN,
1530 Boatmen's Bank Building,
St. Louis 2, Missouri,
ROBERT V. NIEDNER,
St. Charles, Missouri,
Attorneys for Appellants.

Receipt of service of the above motion to stay the mandate, and a copy of said motion, is hereby acknowledged this 8th day of May, 1946.

C. J. HUGHES,
Spec. Asst. United States Attorney,
St. Louis, Missouri.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 8, 1946.

[fol. 102] (Order Staying Issuance of Mandate.)

May Term, 1946.

Friday, May 10, 1946.

On Consideration of the motion of the appellants for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

May 10, 1946.

[fol. 103] (Motion to Substitute for Deceased Party.)

Comes now A. Ray Oliver, Executor of the Estate of Lola Castlio Oliver, appellant in the above entitled cause, and for this motion states that the said appellant, Lola Castlio Oliver, died domiciled in the County of St. Charles and State of Missouri on the 10th day of March, 1946, leaving a Last Will and Testament, and that on the 15th day of March, 1946, your movent was duly appointed and qualified as Executor of the estate of said appellant by the Probate Court of the County of St. Charles, State of Missouri.

Wherefore, your movent, as Executor of the Estate of Lola Castlio Oliver, requests this Court to permit your

movent to voluntarily substitute himself as a party to the appeal in lieu of the appellant Lola Castlio Oliver.

RICHMOND C. COBURN,
1530 Boatmen's Bank Building,
St. Louis 2, Missouri.

IGOE, CARROLL, KEEFE & COBURN,
1530 Boatmen's Bank Building,
St. Louis 2, Missouri.

ROBERT V. NIEDNER,
St. Charles, Missouri.
Attorneys for A. Ray Oliver, Executor of the Estate of Lola Castlio Oliver.

Receipt of service of the above Motion to Substitute, and a copy of said Motion, is hereby acknowledged this 8th day of May, 1946.

[fol. 104]

C. J. HUGHES,
Spec. Asst. United States Attorney,
St. Louis, Missouri.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 8, 1945.

(Letters Testamentary to A. Ray Oliver, Executor of Estate of Lola Castlio Oliver, deceased.)

In The Probate Court

The State of Missouri,
County of St. Charles—ss.:

The State of Missouri, to all to whom these Presents shall come—Greeting:

Know Ye, That the Last Will and Testament of Lola Castlio Oliver deceased, late of St. Charles County, Missouri, hath, in due form of law, been exhibited, proved and recorded, in the office of the Judge of the Probate Court of

St. Charles County, Missouri, a copy of which is hereunto annexed; and inasmuch as it appears that A. Ray Oliver has been appointed Executor in and by said Last Will and Testament, to execute the same, and to the end that the property of the said Testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said Last Will and Testament may be executed according to the request and instruction of the Testator, we do hereby authorize him the said A. Ray Oliver as such Executor, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said Lola Castlio Oliver at the time of her death, in whosoever hands or possession the same may be found; and to perform and fulfill all such duties as may be enjoined upon him by said [fol. 105] Last Will and Testament so far as there shall be property and the law charge him; and in general to do and perform all other acts which are now or may be hereafter required of him by law.

In Testimony Whereof, I, Webster F. Karrenbrock, Judge of the Probate Court, in and for said County of St. Charles, have hereunto signed my name and affixed the seal of said Court, at office in St. Charles, Mo., this 15th day of March, A. D. 1946.

(Seal) WEBSTER F. KARRENBROCK,
Judge of Probate.

State of Missouri,
County of St. Charles:—ss.:

I, Myrtle Wolter, Clerk of the Probate Court, in and for said County, hereby certify that the foregoing is a true copy of the original Letters Testamentary granted to A. Ray Oliver on the Estate of Lola Castlio Oliver, deceased, as the same appear of record in my office. And I hereby further certify that said Letters are now in full force and have not been revoked, and the person named therein is

still the duly qualified and acting Executor of the Estate of said Lola Castlio Oliver, deceased.

Witness my hand and the seal of said Court. Done at office in St. Charles, Mo., this 15th day of May, 1946.

(Seal) MYRTLE WOLTER,
Clerk of the Probate Court of
St. Charles County, Missouri.

[fol. 106] (Endorsed): Filed in U. S. Circuit Court of Appeals, May 16, 1946.

(Order substituting A. Ray Oliver, as Executor of the Estate of Lola Castlio Oliver, deceased, as party Appellant.

United States Circuit Court of Appeals

Eighth Circuit

May Term, 1946.

Friday, May 17, 1946.

Lola Castlio Oliver, and A. Ray Oliver, her husband, and Mrs. B. I. Castlio (also known as B. Irene Castlio), Appellants,

No. 13,174. vs.

United States of America.

Appeal from the District Court of the United States for the Eastern District of Missouri.

There is this day brought to the attention of the Court the motion of A. Ray Oliver, as Executor of the Estate of Lola Castlio Oliver, deceased, for voluntary substitution as a party to this appeal in lieu of the appellant Lola Castlio Oliver, and also certified copy of Letters Testamentary granted by the Probate Court of St. Charles County, Missouri, to said A. Ray Oliver, as Executor, etc.

In pursuance of said motion and Letters Testamentary, It is Ordered by this Court that the said A. Ray Oliver, as Executor of the Estate of Lola Castlio Oliver, deceased, be, and he is hereby, substituted as a party appellant in lieu of the appellant Lola Castlio Oliver.

May 17, 1946.

[fol. 107] (Clerk's Certificate.)

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein A. Ray Oliver, as Executor of the Estate of Lola Castlio Oliver, deceased, and A. Ray Oliver, her husband, and Mrs. B. I. Castlio (also known as B. Irene Castlio), were Appellants and the United States of America was Appellee, No. 13,174, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 20th day of May, A. D. 1946.

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Seal)

[fol. 108] SUPREME COURT OF THE UNITED STATES

No. 151—October Term, 1946

ORDER ALLOWING CERTIORARI—Filed October 14, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.